

DOCKET NO. UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES INC., ET AL.,	:	J.D. WATERBURY
Plaintiffs,	:	
	:	
VS.	:	AT WATERBURY
	:	
PREFERRED TOOL AND DIE, INC., ET AL.,	:	
Defendants.	:	JUNE 25, 2015

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO STRIKE COUNTS V AND VI OF DEFENDANT BOSCO'S COUNTERCLAIMS**

Plaintiffs, Nucap Industries Inc. ("Nucap Industries") and Nucap US Inc., as the successor to Anstro Manufacturing ("Nucap US") (collectively "Plaintiffs" or "NUCAP"), respectfully file this Memorandum of Law in support of their Motion to Strike Counts V and VI of Defendant Robert A. Bosco Jr.'s ("Bosco" or "Defendant") Counterclaims.

**I. INTRODUCTION**

Bosco's Counterclaims for tortious interference and abuse of process are both legally defective as a matter of Connecticut law and should be stricken. *See* Ex. A, Counterclaims at Counts V and VI. Those claims, however, represent only one small part of the legal defects with Bosco's Counterclaims. Counts I – IV, which are subject to separate motion practice by Plaintiffs, have already been dismissed by Judge Roraback in prior litigation between NUCAP and Bosco and represent nothing more than an improper attempt by Bosco to re-litigate issues that have already been decided by this Court.

With respect to this Motion, Count Five—tortious interference with prospective business relationships—fails as a matter of law for two independent reasons. First, it does not contain any allegations of a known business relationship with which NUCAP allegedly interfered. Connecticut law requires such allegations and Bosco must both identify the business relationship at issue and plead facts that would show NUCAP had specific knowledge of the relationship.

Bosco has done neither and his tortious interference claim must be stricken. Second, any of Bosco's losses for NUCAP's alleged tortious interference would be solely economic in nature and, as a result, barred by Connecticut's economic loss doctrine. Indeed, Bosco freely admits that his tortious interference losses are tied to an inability to obtain gainful employment—an economic harm only. There are no allegations of physical harm or damage to property.

Further, Bosco's claim for abuse of process is itself a frivolous exercise and can be easily stricken with prejudice. In essence, Bosco has filed an abuse of process claim against Plaintiffs based on Bosco's own frustrations that his conduct has led to litigation. There is nothing in Bosco's abuse of process claim that would actually satisfy the legal standard or state any of the facts or circumstances on excessive force or extortion that are required to state a claim for abuse of process. Nor could he. Through this action, Plaintiffs are appropriately and properly using the courts to protect against the deliberate and systematic misappropriation of its trade secrets, as orchestrated by Bosco and others. As a result, the Court should strike Count Six.

## **II. BACKGROUND**

### **A. Factual Background**

NUCAP is an industry leader in the design and manufacture of aftermarket automotive parts and has brought this action against Preferred and Defendant Robert A. Bosco, Jr. for misappropriation of Plaintiffs' trade secrets and proprietary product design information. After Preferred—a company with no prior experience in the automotive or brake pad industry—either hired or associated itself with Bosco and other former employees of Plaintiffs, it quickly “came to market” with a line of automotive products that had a striking resemblance to products manufactured and designed by Plaintiffs. One such Preferred employee (and former employee of an affiliate of Plaintiffs) even began marketing Preferred's brake shim products by touting his experience with Plaintiffs and referencing information relating to NUCAP that Preferred could

potentially share with the customer. As a result, Plaintiffs filed this action to protect against the unlawful disclosure, dissemination, and use of its confidential and proprietary materials. *See* Ex. B, Complaint (“Compl.”) at ¶¶ 1-6.

Until recently, Preferred was not a competitor of NUCAP in the market for automotive products. *Id.* at ¶ 52. Rather, Preferred was a manufacturing company in the medical and electrical fields, with some involvement in consumer goods. *Id.* at ¶ 53. Within the last year, Preferred has decided to expand its business model and attempt to enter the market for the manufacture and design of automotive parts, in competition with NUCAP. *Id.* at ¶ 54. Not coincidentally, Preferred’s decision to compete with NUCAP came after or around the same time when Bosco first became affiliated with Preferred. *Id.* at ¶ 55. Preferred has additionally poached away two former NUCAP engineers and product development employees—Carl Dambrauskas and Tom Reynolds. *Id.* at ¶ 56.

Preferred is targeting NUCAP customers with its brand new product lines and relying on NUCAP’s own product designs to do so. *Id.* at ¶ 64. When NUCAP obtained a copy of a packet that Preferred, through Dambraskas, sent to one of NUCAP’s customers pitching Preferred’s new product line, NUCAP was surprised to learn that the “new” Preferred product drawings, material data sheets, and samples were strikingly similar to products NUCAP had designed and manufactured for several years, including during the period when Bosco, Dambrauskas, and Reynolds were associated with Nucap US. *Id.* at ¶ 71. Given the difficulty that any new competitor would have in being able to quickly “go to market” with competitive products based on the amount and degree of testing, trial and error and other “normal” steps in the design/development/manufacturing process for these highly technical components, and the fact that Preferred’s product offerings are strikingly similar to NUCAP’s own product offerings,

NUCAP believes it is certain and asserts that Preferred has benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's brake shims. *Id.* at ¶ 73.

**B. Procedural History and History of NUCAP's Disputes with Bosco.**

Aside from Bosco's common law legal obligations to Plaintiffs, Bosco had also signed a Confidentiality, Non-Competition, and Non-Solicitation Agreement ("Agreement" or "Non-Competition Agreement") with Nucap. Bosco entered into the Agreement in connection with the \$5 million sale of Bosco's business, Eyelet LLC, to NUCAP in 2009.

The Agreement prohibited Bosco from, among other things, competing with the business being sold to Eyelet Tech or soliciting any of the former clients of Eyelet LLC for a period of five years from the date of the closing of the sale transaction. The Agreement further provided that, so long as Bosco complied with the terms of the restrictive covenants to which he freely agreed, he would receive compensation in the amount of \$1 million, payable over five years in equal installments of \$200,000.00 (*i.e.*, the Covenant Payments).

Bosco received \$600,000 toward the Covenant Payments before Plaintiffs discovered facts strongly suggesting that Bosco had breached the restrictive covenants in the Non-Competition Agreement. When Bosco refused to adequately respond to inquiries regarding his activities, Plaintiffs ceased making the Covenant Payments. After the parties were unable to resolve their dispute over Bosco's activities and the Covenant Payments, Bosco filed suit in Connecticut against NUCAP and Eyelet Tech in April 2014 for breach of the Non-Competition Agreement for failure to make the Covenant Payments. *See Ex. C, Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury. That complaint had four counts: (1) Breach of Contract; (2) Breach of the Guaranty; (3) Breach of the Covenant of Good Faith and Fair Dealing; and (4) Unfair Competition and Trade Practices under

Con. Gen. Stat. § 42-110b. Those claims are the exact same ones that Bosco is asserting now as Counts I – IV of his Counterclaims against Plaintiffs in this action.

Bosco's original Connecticut complaint possessed a fundamental defect, however—it was filed in the wrong place. The Non-Competition Agreement contained a forum selection clause that required any disputes relating to the Non-Competition Agreement be litigated in New York. As Bosco's action was, by his own admission, an action to enforce the terms of the Non-Competition Agreement, it should have been filed in New York and Nucap filed a motion to dismiss on that basis. The Connecticut Superior Court, Judicial District at Waterbury, dismissed Bosco's lawsuit, concluding that the forum selection clause in the Non-Competition Agreement required any disputes relating to the Agreement be litigated in New York. *See* Ex. D, Memorandum of Decision re: Motion to Dismiss, *Bosco v. Eyelet Tech Nucap Corp et al.*, No. UWY-CV14-60234433-S, Superior Court, Judicial District at Waterbury (Roraback, J.).

Consistent with the parties' agreement to litigate disputes arising out of the Agreement in New York, NUCAP filed suit in New York to enforce the terms of the Agreement and asserted that Bosco had breached the Agreement through various competitive activities. On November 21, 2014, Bosco filed an answer to Plaintiffs' Complaint in the New York action. Bosco filed an Amended Answer and Counterclaims in New York on December 11, 2014, asserting counterclaims for breach of contract (Count One), breach of a guarantee (Count Two), breach of the covenant of good faith and fair dealing (Count Three), and violations of the Connecticut Unfair Trade Practices Act (Count Four). Those counterclaims are moving forward in New York and identical to those Bosco is now asserting here.

On June 22, 2015, Plaintiffs filed a motion to dismiss Counts I to IV on the basis of the forum selection clause and Judge Roraback's prior dismissal order.

### **III. ARGUMENT**

#### **A. Legal Standard.**

“The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted.” *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, (2003). When considering a motion to strike, the court accepts all well pleaded facts in the complaint. *RK Constructors, Inc. v. Fusco Corp.*, 231 Conn. 381, 383 n.2, (1994). There is no obligation, however, to accept legal conclusions or conclusory allegations of “fact.” *Mills v. Harrison*, 2015 Conn. Super. LEXIS 790, at \*3 (Conn. Super. Ct. Apr. 8, 2015).

#### **B. Bosco’s Tortious Interference Claim Is Legally Defective In At Least Two Material Ways.**

##### **1. Bosco Has Failed To Allege Actual Knowledge By NUCAP of an Actual Business Relationship, As Required by Connecticut Law.**

Count Five of Bosco’s Counterclaim fails to both identify the specific business relationships with which NUCAP allegedly interfered, or plead that NUCAP had knowledge of those relationships. Both elements are required by Connecticut law and Bosco’s failure to plead those elements is fatal to Count Five.

To state a claim for tortious interference with a business relationship, Bosco must adequately allege, among other things, the existence of a contractual or beneficial relationship and NUCAP’s *actual* knowledge of that relationship. *Golek v. Saint Mary's Hospital, Inc.*, 133 Conn.App. 182, 195, 34 A 3d 452 (2012). The “knowledge” component is an essential element to any claim for tortious interference with a business relationship. *Tassmer v. McManus*, 2009 Conn. Super. LEXIS 982, at \*7 (Conn. Super. Ct. Apr. 8, 2009). Actual and real knowledge is required. *Baer v. New Eng. Home Delivery Servs., LLC*, 2007 Conn. Super. LEXIS 2696, at \*11 (Conn. Super. Ct. Oct. 18, 2007). Potential or hypothetical knowledge of a generalized

opportunity, however strong, is insufficient to state a claim for tortious interference with a business relationship. *Id.*

Here, Bosco has failed to allege the essential elements of actual knowledge by NUCAP of Bosco's actual business relationships. Instead, the Counterclaim only states that NUCAP has made misrepresentations about Bosco to other individuals in the brake industry "with whom Counterclaim-Defendants are aware Mr. Bosco *could* seek employment." Ex. A, Counterclaim at ¶ 58 (emphasis added). There are no allegations that NUCAP had actual knowledge of any business opportunities involving Bosco and then interfered with those opportunities. Instead, Bosco only makes vague statements that NUCAP's alleged representations were made to persons in the automotive industry and that NUCAP knew that Bosco could potentially seek employment with those persons or entities. These generalized and non-specific allegations are not enough.

Indeed, Connecticut law requires Bosco plead actual knowledge of an actual opportunity. As Bosco has failed to include these essential allegations in his Counterclaim, Count Five should be stricken. *Baer*, 2007 Conn. Super. LEXIS 2696, at \*11 (granting motion to strike and holding that allegations of general knowledge of potential business opportunities were insufficient to state claim for tortious interference with business relationships); *see also Tassmer*, 2009 Conn. Super. LEXIS 982, at \*8 ("Without a claim or facts that the defendant knew of either a contractual/business relationship or potential contract/business relationships, the plaintiffs cannot establish their claim of tortious interference with a contractual relationship."). If Bosco had any actual business opportunities or relationships with which NUCAP allegedly interfered, Connecticut law requires him to identify those relationships by name and state facts concerning NUCAP's knowledge of the relationships. The fact that he has not means that Count Five must be stricken.

## **2. Count Five Is Independently Barred By The Economic Loss Doctrine.**

Bosco's tortious interference claim is also barred by the economic loss doctrine because Bosco's alleged tort losses are all economic and commercial in nature.

The economic loss doctrine bars negligence claims for commercial losses arising out of the performance of contracts. *Ulbrich v. Groth*, 78 A.3d 76, 88 n.14 (Conn. 2013). The rationale behind the doctrine is that, when sophisticated parties enter into a contract, they are free to allocate the risks of their enterprise as they please, and recovery under tort law should not be allowed for purely commercial losses. *American Progressive Life & Health Insurance Co. v. Better Benefits, LLC*, 971 A.2d 17, 20 (2009).

Here, there is no dispute that Bosco's alleged damages are purely economic. Bosco himself admits that the harm he suffered from Plaintiffs' alleged tortious conduct was the inability to obtain gainful employment. Ex. A, Counterclaim at ¶¶ 59-60. There is not a single allegation in the Counterclaim that Bosco suffered any physical injury or property damage as a result of Plaintiffs' alleged tortious interference. Bosco's claims of reputational injury are economic as well, as the alleged harm from his reputational damage is the same—inability to obtain gainful employment. Accordingly, even if Bosco could establish that Plaintiffs interfered with his business relations, which he cannot, he would still be barred from recovery by the economic loss doctrine. *Ulbrich*, 78 A.3d at 88 n.14.

### **C. The Court Should Dismiss Count Six (Abuse of Process) as Legally Insufficient.**

Bosco's claim for abuse of process lacks any support in Connecticut law, pleads no facts in support of its bald legal conclusions, and should be stricken.

To state a claim for abuse of process in Connecticut, the "complaint must point to specific misconduct intended to cause specific injury outside of the normal contemplation of



private litigation.” *Mills*, 2015 Conn. Super. LEXIS 790, at \*6. By way of example, conduct that might give rise to claims for abuse of process include: “unreasonable force, excessive attachments or extortionate methods.” *Id.* (citing *Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P.*, 260 Conn. 766, 776, 802 A.2d 44 (2002)). Indeed, “the gravamen of the action for abuse of process is the use of a legal process . . . against another *primarily* to accomplish a purpose for which it is not designed.” *Mozzochi v. Beck*, 204 Conn. 490, 494 (Conn. 1987) (emphasis in original) (citing Restatement Second (1977) Torts, §682). The phrase “primarily” is meant to exclude liability when litigation “is used for the purpose for which it is intended,” even when some incidental motive exists on the part of the defendant. *Cadle Co. v. D'Addario*, 131 Conn. App. 223, 235-236 (Conn. App. Ct. 2011).

Bosco’s Counterclaim does not come close to meeting this standard. NUCAP has every right, as it has through this case, to bring a legal action to protect against the unlawful misappropriation of its trade secrets by Bosco and Preferred. The Complaint contains numerous instances of specific and well-pled facts concerning the misappropriation. *See generally* Complaint. This litigation is absolutely appropriate and has been brought for the legitimate purpose of protecting NUCAP’s rights. *Id.*

Tellingly, Mr. Bosco has not filed a motion to strike any of NUCAP’s claims against him, essentially admitting that the allegations are sufficient at this stage of the litigation to state a plausible claim for trade secret misappropriation against him. More importantly, there are no specific allegations that NUCAP has used unreasonable force against Mr. Bosco or has engaged in extortionate tactics against him. *See Mills*, 2015 Conn. Super. LEXIS 790, at \*6 (granting motion to strike generalized allegations that legal action was used for improper purpose because there were no specific facts that primary purpose of legal action was improper). Instead, Mr.

Bosco has alleged, at most, frustration that his actions and misconduct has led to legal action from his former employer.

The existence of a separate action in New York is a function of a forum selection clause in the Non-Competition Agreement that Bosco freely entered into with NUCAP, not some improper purpose by NUCAP. This Court, per Judge Roraback, found the forum selection clause in the Non-Competition Agreement to be enforceable, and NUCAP has brought separate claims against Bosco relating to his breach of the Non-Competition Agreement in New York consistent with the forum selection clause and Judge Roraback's ruling. As is the case here, Bosco has filed an answer only in New York and has not challenged the legal sufficiency of the facts plead in NUCAP's complaint against him in New York. *See* Ex. E, Answer in New York Action. The claims in this case against Bosco are different, stemming from Bosco's alleged misappropriation of trade secrets. Because Preferred is also a defendant, and because of concerns regarding whether personal jurisdiction could be maintained over Preferred in New York, NUCAP brought this separate action in Connecticut. There is absolutely no authority – and Bosco cites none – for the proposition that the existence of two separate lawsuits against Bosco somehow is an “abuse of process” under Connecticut law.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs' Motion and strike Counts V and VI of Bosco's Counterclaims.

PLAINTIFFS,  
NUCAP INDUSTRIES, INC. and NUCAP US,  
INC.

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**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed, postage prepaid or delivered electronically or non-electronically, on this 25<sup>th</sup> day of June, 2015 to all counsel and self-represented parties of record, as follows:

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# EXHIBIT A

UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES, INC. et al.	:	JUDICIAL DISTRICT
	:	OF WATERBURY
Plaintiffs,	:	
v.	:	
	:	AT WATERBURY
PREFERRED TOOL AND DIE, INC., et al.,	:	
	:	
Defendants.	:	MAY 21, 2015

**ANSWER, SPECIAL DEFENSES AND COUNTERCLAIM**

Defendant, Robert Bosco, Jr. ("Defendant"), by and through his attorneys, Hinckley, Allen & Snyder, LLP, hereby submits his Answer, Special Defenses to the Complaint by the Plaintiffs, NUCAP Industries Inc. and NUCAP US, Inc. (collectively, "Nucap" or "Plaintiffs") and asserts the following Counterclaims.

**INTRODUCTION**

1. Denied.
2. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2 and therefore leaves the Plaintiffs to their proof.
3. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 3 and therefore leaves the Plaintiffs to their proof.
4. Defendant admits that he left his position with NUCAP. As to the remainder of the allegations, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 and therefore leaves the Plaintiffs to their proof.
5. Denied.
6. Denied.

### **THE PARTIES**

7. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 7.

8. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8.

9. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 9.

10. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 10.

11. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 11.

12. Admitted.

13. Defendant Bosco admits that he was previously employed by Anstro Manufacturing, Inc., but denies that he was employed by Nucap US.

### **JURISDICTION AND VENUE**

14. Denied.

15. Denied.

### **FACTUAL BACKGROUND**

#### **Plaintiff's Business**

16. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 16.

17. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 17

18. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 18.

19. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 19.

20. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 20.

21. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 21.

22. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 22.

23. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 23.

24. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 24.

**The Science Behind How Brakes Work**

25. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 25 and therefore leaves the Plaintiffs to their proof.

26. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 26 and therefore leaves the Plaintiffs to their proof.

27. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 27 and therefore leaves the Plaintiffs to their proof.

28. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 28 and therefore leaves the Plaintiffs to their proof.



29. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 29 and therefore leaves the Plaintiffs to their proof.

30. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 30 and therefore leaves the Plaintiffs to their proof.

31. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 31 and therefore leaves the Plaintiffs to their proof.

**NUCAP'S Considerable Efforts to Protect its Trade Secret, Confidential and Proprietary Information**

32. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 32 and therefore leaves the Plaintiffs to their proof.

33. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 33 and therefore leaves the Plaintiffs to their proof.

34. Bosco admits he signed Confidentiality and Intellectual Property Agreement with Anstro Manufacturing Inc. Insofar as the allegations of Paragraph 34 implicate a written agreement, the agreement speaks for itself.

35. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 35 and therefore leaves the Plaintiffs to their proof.

36. Bosco admits he signed other agreements with NUCAP, the terms of which speak for themselves. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 36 and therefore leaves the Plaintiffs to their proof.

37. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 37 and therefore leaves the Plaintiffs to their proof.

38. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 38 and therefore leaves the Plaintiffs to their proof.

39. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 39 and therefore leaves the Plaintiffs to their proof.

40. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 40 and therefore leaves the Plaintiffs to their proof.

**Bosco's History at NUCAP**

41. Defendant Bosco admits that he was previously employed by Anstro Manufacturing, Inc, but denies that he was employed by Nucap US.

42. Defendant admits that he held the title of General Manager at NUCAP while employed by Anstro Manufacturing, Inc. Bosco denies the remainder of the allegations of Paragraph 42.

43. Defendant denies that he had supervisory authority "over all employees, projects, and products at Nucap US."

44. Defendant denies the allegations of Paragraph 44 to the extent they assert that the Defendant's job function was outside the scope of his title as General Manager.

45. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 45 and therefore leaves the Plaintiffs to their proof.

46. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 46 and therefore leaves the Plaintiffs to their proof.

47. The Defendant denies he was employed by Nucap US and, for the remainder of the allegations lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 47 and therefore leaves the Plaintiffs to their proof.

48. Denied.

49. Denied. Insofar as Paragraph 49 implicates a written agreement, the terms of the Agreement speak for themselves.

**Bosco's Termination and Subsequent Affiliation with Preferred**

50. Denied.

51. Denied.

52. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 52 and therefore leaves the Plaintiffs to their proof.

53. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 53 and therefore leaves the Plaintiffs to their proof.

54. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 54 and therefore leaves the Plaintiffs to their proof.

55. To the extent Paragraph 55 alleges Bosco was affiliated with Preferred, those allegations are denied. As for the remainder of the allegations in Paragraph 55, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 55 and therefore leaves the Plaintiffs to their proof.

56. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 56 and therefore leaves the Plaintiffs to their proof.

57. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 57 and therefore leaves the Plaintiffs to their proof.

58. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 58 and therefore leaves the Plaintiffs to their proof.

59. The Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 59.

60. Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 60 to the extent a response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the same as they are not addressed to Defendant Bosco.

61. Defendant admits that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 61 to the extent a response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the same as they are not addressed to Defendant Bosco.

**Preferred Productions Nearly Identical to NUCAP's Products Appear on the Market**

62. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 62 about what the Plaintiffs might have believed and therefore leaves the Plaintiffs to their proof. Defendant admits only that he attended the SAE Brake Colloquium in October 2013. The Defendant denies the remainder of the allegations of Paragraph 62 to the extent a response is required. As for the allegations regarding Preferred's activities, the Defendant can neither admit nor deny the allegations as they are not addressed to Defendant Bosco.

63. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 64 and therefore leaves the Plaintiffs to their proof.

64. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 64 and therefore leaves the Plaintiffs to their proof.

65. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 65 and therefore leaves the Plaintiffs to their proof.

66. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 66 and therefore leaves the Plaintiffs to their proof.

67. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 67 and therefore leaves the Plaintiffs to their proof.

68. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 68 and therefore leaves the Plaintiffs to their proof.

69. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 69 and therefore leaves the Plaintiffs to their proof.

70. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 70 and therefore leaves the Plaintiffs to their proof.

71. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 71 and therefore leaves the Plaintiffs to their proof.

72. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 72 and therefore leaves the Plaintiffs to their proof.

73. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 73 and therefore leaves the Plaintiffs to their proof.

74. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 74 and therefore leaves the Plaintiffs to their proof.

**COUNT I – THREATENED AND/OR ACTUAL MISAPPROPRIATION OF  
TRADE SECRETS PURSUANT TO THE CONNECTICUT UNIFORM TRADE  
SECRETS ACT, CONN. GEN. STAT. §§ 35-50 TO 35-58.**

75. The Defendant incorporates its responses from all previous paragraphs as if set forth fully herein.

76. Denied.

77. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 77 and therefore leaves the Plaintiffs to their proof.

78. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 78 and therefore leaves the Plaintiffs to their proof.

79. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 79 and therefore leaves the Plaintiffs to their proof. As for the allegation that Bosco was affiliated with Preferred, that allegation is denied.

80. Denied.

81. Denied.

82. Denied.

**COUNT II – BREACH OF CONFIDENTIALITY AND INTELLECTUAL PROPERTY  
AGREEMENT**

83. The Defendant incorporates its responses from all previous paragraphs as if set forth fully herein.

84. Bosco admits he signed a Confidentiality and Intellectual Property Agreement with Anstro Manufacturing Inc. Insofar as Paragraph 84 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 86 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

## **SPECIAL DEFENSES AS TO ALL COUNTS**

### **FIRST SPECIAL DEFENSE:**

Plaintiffs' Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

### **SECOND SPECIAL DEFENSE:**

Plaintiffs' damages, if any, were caused in whole or in part by other parties for which Defendant bears no responsibility.

### **THIRD SPECIAL DEFENSE:**

Plaintiffs' claims are barred by the doctrine of waiver.

### **FOURTH SPECIAL DEFENSE:**

Plaintiffs' claims are barred by the doctrine of laches.

### **FIFTH SPECIAL DEFENSE:**

Plaintiffs' claims are barred by the doctrine of unclean hands.

### **SIXTH SPECIAL DEFENSE:**

Plaintiffs' damages, if any, were caused in whole or in part by their own actions and the amount of damages otherwise recoverable must be diminished in the proportion which the culpable conduct attributable to Plaintiffs bears to the culpable conduct of Defendant.

### **SEVENTH SPECIAL DEFENSE:**

Plaintiffs' claims are barred by their own material breach of contract.

### **EIGHTH SPECIAL DEFENSE:**

Plaintiffs' claims are barred by the prior pending action doctrine insofar as there is another action pending between the same parties for the same cause of action in another court.

## COUNTERCLAIMS

### COUNT ONE: BREACH OF CONTRACT

1. Counterclaim-Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.
2. Counterclaim-Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.
3. On information and belief, the Counterclaim-Defendant NUCAP US Inc. is the successor to Anstro Manufacturing, Inc.
4. Counterclaim-Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC ("Eyelet Tech"), a Connecticut limited liability company.
5. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.
6. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.
7. On November 19, 2009, Counterclaim-Plaintiff and his co-owner sold Eyelet Tech to NUCAP and Eyelet Tech NUCAP Corp. ("ETNC"), pursuant to an Asset Purchase Agreement.
8. Under the terms of the Asset Purchase Agreement ("APA"), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.
9. As part of the sale transaction, Counterclaim-Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP,



which was also executed and made effective on November 19, 2009 (the "Non-Competition Agreement").

10. Under Section 3 of the Non-Competition Agreement, Counterclaim-Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009. Accordingly, the period of any restrictive covenant expired no later than November 19, 2014.

11. Under the terms of the Non-Competition Agreement, Counterclaim-Plaintiff agreed that he would not:

- a. engage in the "Business" (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);
- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;
- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and

- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

12. Under the terms of the Non-Competition Agreement, these restrictions expired on November 19, 2014 or sooner became void in the event of a default by the Counterclaim-Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

13. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Counterclaim-Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;
- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

14. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Counterclaim-Plaintiff.

15. Counterclaim-Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

16. Counterclaim-Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro"). On information and belief, Anstro is now the Counterclaim Defendant Nucap US.

17. On January 23, 2012, Counterclaim-Plaintiff's employment with Anstro ceased and Counterclaim-Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

18. On May 31, 2012, Counterclaim-Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Counterclaim-Plaintiff's separation from Anstro.

19. Under Section 7(b) of the Separation Agreement, NUCAP and Counterclaim-Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

20. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

21. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

22. Certain Covenant Payments were made on behalf of the Counterclaim Defendants to the Counterclaim-Plaintiff on the first, second and third anniversaries of the closing, in the total amount of \$600,000.

23. On or about November 11, 2013, Counterclaim-Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009."

24. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that the Counterclaim-Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

25. Counterclaim-Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

26. On November 18, 2013, Counterclaim-Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium ("your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements"); (2) spoke to NUCAP's customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

27. NUCAP admitted to the Counterclaim-Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC's business caused by the alleged actions by Counterclaim-Plaintiff.

28. The Counterclaim-Defendants, in bad faith and with reckless disregard for the Counterclaim-Plaintiff's rights under the Non-Competition Agreement, declared that the Counterclaim-Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

29. Counterclaim-Plaintiff performed all of his obligations under the Non-Competition Agreement.

30. The Counterclaim-Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Counterclaim-Plaintiff under the terms of the Non-Competition Agreement.

31. The foregoing conduct of the Counterclaim-Defendants constitutes a breach of the Non-Competition Agreement and Separation Agreement.

32. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

33. Pursuant to Section 15 of the Separation Agreement, the Counterclaim-Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

**COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)**

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Counterclaim-Defendant NUCAP guaranteed payment of the Covenant Payments.

37. The Counterclaim-Defendant NUCAP has failed to pay the obligations under the Non-Competition Agreement and is liable to the Counterclaim-Plaintiff for damages caused by the Counterclaim Defendants failure to make the Covenant Payments when due.

38. The Counterclaim-Plaintiff has been damaged by the actions of the Counterclaim-Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

**COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (against all Counterclaim-Defendants)**

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Counterclaim-Plaintiff and Counterclaim-Defendants are parties to the Non-Competition Agreement and Separation Agreement.

41. Counterclaim-Plaintiff has not breached the Non-Competition Agreement or the Separation Agreement.

42. Counterclaim-Defendants are required to make the annual Covenant Payments to the Counterclaim-Plaintiff.

43. Counterclaim-Defendants unilateral termination of the Non-Competition Agreement and failure to fulfill their obligations under the Separation Agreement without cause was improper and in reckless disregard of the rights of the Counterclaim-Plaintiff.

44. In terminating Non-Competition Agreement without cause and failing to fulfill their obligations under the Separation Agreement, the Counterclaim-Defendants have acted in bad faith and/or reckless disregard for the rights of the Counterclaim-Plaintiff under the Agreements.

45. By virtue of the foregoing, the Counterclaim-Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Counterclaim-Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Counterclaim-Plaintiff seeks to recover from Counterclaim-Defendants such exemplary or punitive damages as are allowed by law.

**COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER  
CON. GEN. STAT. §42-110b, et seq. (against all Counterclaim-Defendants)**

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Counterclaim-Plaintiff, the Counterclaim-Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Counterclaim-Plaintiff's employment, and Counterclaim-Plaintiff's performance of the terms of the agreements, including but not limited to the Non-Competition Agreement and Separation Agreement, without fully compensating the Counterclaim-Plaintiff for those benefits.

50. By engaging in the acts alleged above, Counterclaim-Defendants have engaged in conduct that: (a) is offensive to public policy, governing statutes for consumer protection, common law principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Counterclaim-Defendants have committed such acts in the conduct of trade or commerce.

52. Counterclaim-Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Counterclaim-Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, *et seq.*

54. The actions described above by Counterclaim-Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Counterclaim-Defendants alleged above, Counterclaim-Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(c), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.

**COUNT FIVE: TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**  
**(against all Counterclaim-Defendants)**

57. Paragraphs 1 through 56 of Count Four are hereby incorporated by reference and made paragraphs 1 through 56 of Count Five as if fully set forth herein.

58. Since the termination of Mr. Bosco's employment with NUCAP, Counterclaim-Defendants have willfully and maliciously made misrepresentations about Mr. Bosco to individuals working in the brake industry with whom Counterclaim-Defendants are aware Mr. Bosco could seek employment.

59. As a direct result, Counterclaim-Plaintiff has been unable to gain employment in positions for which he is otherwise qualified, due to the interference by the Counterclaim-Defendants.

60. If not for NUCAP's conduct in interfering with Counterclaim-Plaintiff's employment opportunities, Counterclaim-Plaintiff would have been able to enter into an agreement for gainful employment.



61. As a direct result of NUCAP's conduct, Counterclaim-Plaintiff has been deprived of opportunities he would otherwise have had.

62. As a result, Counterclaim-Plaintiff has suffered damage to his reputation, in addition to economic loss in not being able to earn a salary in the interim.

**COUNT SIX: ABUSE OF PROCESS (against all Counterclaim-Defendants)**

63. Paragraphs 1 through 62 of Count Five are hereby incorporated by reference and made paragraphs 1 through 62 of Count Six as if fully set forth herein.

64. Counterclaim- Defendants have instituted this legal action primarily for an improper purpose for which the legal system was not designed.

65. Counterclaim-Defendants have instituted this and the other pending action primarily as an attempt to intimidate or coerce Counterclaim-Plaintiff to forfeit his legal rights to the Covenant Payments and/or deter him from seeking future employment in the brake parts industry.

66. As a result, the Counterclaim-Plaintiff has suffered damages.

WHEREFORE, the Counterclaim-Plaintiff Robert Bosco, Jr. seeks judgment granting him:

As to All Counts

1. Actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Counterclaim Defendants breaches and violations of law;
2. Attorney's fees pursuant to Conn. Gen. Stat. §35-54;
3. Pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
4. Attorneys' fees and costs; and
5. Such other and further relief to which Counterclaim-Plaintiff is justly entitled.

As to Counts Three, Four, Five, and Six:

6. Exemplary or punitive damages;

As to Count Four:

7. Damages pursuant to CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;

THE DEFENDANT/COUNTERCLAIM-  
PLAINTIFF

ROBERT BOSCO, JR.

By



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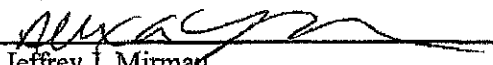
UWY-CV-14-6026552-S	:	SUPERIOR COURT
	:	
NUCAP INDUSTRIES, INC. et al.	:	JUDICIAL DISTRICT
	:	OF WATERBURY
Plaintiffs,	:	
v.	:	
	:	AT WATERBURY
PREFERRED TOOL AND DIE, INC., et al.,	:	
	:	
Defendants.	:	MAY 21, 2015

**STATEMENT OF AMOUNT IN DEMAND**

The amount of damages claimed in this action is more than Fifteen Thousand and 00/100 (\$15,000.00) Dollars exclusive of interest and costs.

THE DEFENDANT/COUNTERCLAIM-  
PLAINTIFF

ROBERT BOSCO, JR.

By   
 Jeffrey J. Mirman  
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**CERTIFICATION OF SERVICE**

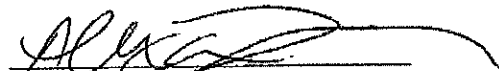
I hereby certify that a copy of the foregoing was sent this 21st day of May, 2015, via electronic mail to the following:

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Alexa T. Millinger

# **EXHIBIT B**

RETURN DATE: AUGUST 19, 2014	:	SUPERIOR COURT
NUCAP INDUSTRIES INC.;	:	
and	:	
NUCAP US INC., as successor to ANSTRO MANUFACTURING, INC.;	:	
VS.	:	J.D. OF NEW HAVEN
PREFERRED TOOL AND DIE, INC.;	:	AT NEW HAVEN
and	:	
PREFERRED AUTOMOTIVE COMPONENTS, a division of PREFERRED TOOL AND DIE;	:	
and	:	
ROBERT A. BOSCO, JR.	:	JULY 21, 2014

### COMPLAINT

Plaintiffs Nucap Industries Inc. ("Nucap Industries") and Nucap US Inc., as the successor to Anstro Manufacturing ("Nucap US") (collectively "Plaintiffs" or "NUCAP"), bring this Complaint against Defendants, Preferred Tool and Die, Inc., Preferred Automotive Components, a division of Preferred Tool and Die (collectively "Preferred"), and Robert A. Bosco, Jr. ("Bosco") (collectively, "Defendants"), and state as follows:

### INTRODUCTION

1. Through this action, Plaintiffs seek to remedy the unauthorized and unlawful use of their valuable trade secrets by Defendants, who upon information and belief have capitalized on the access that Bosco had to Plaintiffs' trade secrets as a former employee of Nucap US. Upon information and belief, Preferred has used Plaintiffs' trade secret information in the course of establishing a competing business for the sale of brake component parts.

Bosco's actions, upon information and belief, have been accomplished through the violation of the Confidentiality and Intellectual Property Agreement that he signed, and which NUCAP seeks to enforce.

2. NUCAP is a global leader in the design, development, manufacturing, marketing, and sale of brake components.

3. Plaintiffs have invested considerable time and resources in the development of their product lines and maintain reasonable efforts to protect all manners of information regarding the design, development, manufacturing and marketing of their products. The aforementioned information is proprietary and confidential to Plaintiffs and derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons (including Preferred) who can obtain economic value from its disclosure or use.

4. Until recently, Preferred had not been a competitor of NUCAP in the market for "shims" (thin layers of rubber or metal that fit between the brake pads and the rotors and function primarily to reduce brake noise), "caliper hardware" (the hardware associated with calipers, which operate to slow the car's wheels by pressing against the rotors), and similar brake component parts—that is, until Bosco left his position working for Nucap US and became associated with Preferred.

5. The timing of Preferred's entry into the marketplace for shims, caliper hardware and other competitive products, upon information and belief, is not coincidental. Upon information and belief, it is part of a concerted plan by Preferred to steal NUCAP's trade secrets, confidential information, and intellectual property, to unfairly compete with Plaintiffs and create product lines using NUCAP's proprietary, confidential and trade secret information.

6. The access and use of this information is providing and has provided Preferred with an unfair advantage that Preferred would not have without access to NUCAP's proprietary, confidential and trade secret information.

#### **THE PARTIES**

7. Plaintiff Nucap Industries is an Ontario, Canada corporation with a principal place of business located at 3370 Pharmacy Avenue, Toronto, Ontario, MIW 3K4, Canada.

8. Plaintiff Nucap US is a Delaware corporation with a principal place of business at 238 Wolcott Road, Wolcott, Connecticut.

9. Nucap US is the successor to Anstro Manufacturing, Inc.

10. Defendant Preferred Tool and Die is a Connecticut corporation with a principal place of business at 30 Forest Parkway, Shelton, CT 06484-6122.

11. Defendant Preferred Automotive Components is, upon information and belief, a division of Defendant Preferred Tool and Die.

12. Defendant Robert Bosco is an individual who, upon information and belief, resides at 13 Executive Hill Road, Wolcott, Connecticut.

13. Bosco was previously employed by Nucap US.

#### **JURISDICTION AND VENUE**

14. This Court has personal jurisdiction over Defendants because Defendants conduct business in this State, reside in this State, breached duties owed to Plaintiffs in this State, and because a substantial part of the events and omissions giving rise to this action took place in this State.

15. Venue is proper in this District because Bosco is a resident of this Judicial District and a substantial part of the transactions and events giving rise to this action took place in this Judicial District.



## **FACTUAL BACKGROUND**

### **Plaintiffs' Business**

16. NUCAP is a global leader in brake components and specializes in the manufacture and design of all lines of brake products.
17. Nucap US is the successor to Anstro Manufacturing, Inc. and is a wholly owned subsidiary of Nucap Industries.
18. Like Nucap Industries, Nucap US is similarly engaged in the business of manufacturing, designing, and selling all lines of brake products.
19. The product portfolio for NUCAP ranges from high quality brake pad backing plates, shims, attaching hardware, abutment hardware, and springs used in cars, buses, trucks, motorcycles, aviation and trains.
20. NUCAP is a noise, vibration, harshness ("NVH") leader through the innovations developed at its state of the art research and development center.
21. NUCAP invests significant resources in the development, design, and marketing for all of its products.
22. Because brakes and brake pads are vital to the safety of a vehicle, NUCAP invests heavily in the research and development of the brake system, including all component parts in the brake system.
23. Through its research and development efforts, NUCAP has become an industry leader in brake components and prides itself on the company's ability to manufacture and develop new and innovative product lines.
24. All of Plaintiffs' strategic efforts to develop and grow their business lines are confidential to those outside of Plaintiffs' core business team.

### **The Science Behind How Brakes Work**

25. As set forth above, brake shims are thin layers of rubber or metal that fit between the brake pads and the rotors and function primarily to reduce brake noise. Without shims, the individual components of the brake would cause significant vibration and noise.

26. High quality brake shims are multilayered with varying grades of dampening materials. Engineers tune these layers to get the best NVH qualities for that specific brake system. If the shim is not making contact with the brake pad, it will not do its job.

27. The science behind designing, developing, and manufacturing optimally-performing brake shims is highly technical, involves significant trial and error over the course of many years, and requires special equipment for testing which is not generally known by those outside of this very narrow industry. Put simply, a company (even one connected to the automotive industry) could not just one day decide to enter the market for the design, development and manufacturing of brake shims and thereafter, within a few months, have an optimally-performing product(s) ready to market.

28. Similarly, the science behind developing caliper hardware – the hardware associated with calipers, which allows the brake pads to slide effectively within the caliper in order to press against the rotor to slow or stop the vehicle– also is highly technical, involves significant trial and error over the course of many years, and requires special equipment for testing which is not generally known by those outside of this very narrow industry. As with brake shims, a recent entrant into the market for the design, development and marketing of caliper hardware would not be in a position to quickly “go to market” with a competitive and optimally-performing product(s).

29. Brake shims and caliper hardware are key products for Plaintiffs, which help to differentiate NUCAP from its competitors.

30. Through rigorous design, testing and other processes developed over numerous years, NUCAP has become a market leader in the design, development and manufacturing of brake shims and caliper hardware that its competitors (notwithstanding their best efforts) have been unable to replicate.

31. The formulas, processes, materials, standard operating procedures, and methods used by Plaintiffs in the design, development, manufacturing and marketing of its shims and caliper hardware are trade secrets of NUCAP. Only certain and properly cleared NUCAP employees had access to the totality of this information. Bosco was one such employee.

**NUCAP's Considerable Efforts to Protect its Trade Secret, Confidential and Proprietary Information**

32. NUCAP goes to considerable lengths to protect its trade secrets, confidential and other proprietary information.

33. For example, NUCAP and its affiliates require certain employees (depending on the degree to which those employees have access to NUCAP's trade secret, confidential and proprietary information) to execute Confidentiality and Intellectual Property Agreements. These Agreements provide, among other things, that the employees will not use, disclose, copy or reproduce any information owned, possessed or controlled by NUCAP and/or its affiliates, including but not limited to all information related to developments, inventions, product designs, drawings and specifications, business concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, and files and information relating to customer needs.

34. Bosco signed a Confidentiality and Intellectual Property Agreement with Anstro Manufacturing, Inc., now known as Nucap US, on September 2, 2011. *See* Exhibit "A" attached.

35. NUCAP also requires all employees, from the CEO of the company on down, to agree to and abide by NUCAP's Code of Ethics and Business Conduct ("Code of Ethics"), which requires as a condition of employment, among other things, that employees may not disclose confidential corporate information to anyone outside of NUCAP. The Code of Ethics further states that, even within NUCAP, confidential corporate information should be discussed only with those who have a need to know the information, and that each employee's obligation to safeguard confidential corporate information continues even after the employee leaves NUCAP. All NUCAP employees, including Bosco, have an absolute obligation to comply with the Code of Ethics as a condition of employment with NUCAP.

36. In addition to securing the agreements of its employees to abide by Confidentiality and Intellectual Property Agreements and its Code of Ethics, NUCAP also requires certain employees, depending on their level of access to NUCAP's trade secret, confidential and proprietary information – including Bosco – to execute additional agreements (employment and/or non-competition agreements) providing that those employees will keep all such information in strict confidence and, both during and upon leaving the employ of NUCAP, providing that they will not disclose any such information to any third party.

37. NUCAP also takes a number of other steps to prevent its trade secret and other proprietary information from being disclosed.

38. For example, NUCAP limits access to its proprietary databases and information relating to its developments, inventions, product designs, drawings and specifications, business

concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, and/or files and information relating to customer needs to a certain subset of employees and, even within that subset, employees are only provided with access to the portions of the databases and information that they need to perform their job duties.

39. NUCAP also takes many other measures to protect its trade secrets and other proprietary information, including but not limited to password protecting its computers, limiting access to electronic data on a "need to know" basis (*i.e.*, only engineers and persons with appropriate and necessary clearance have access to engineering files), limiting remote access to data, maintaining security at its facilities, marking certain documents and data as "confidential" or with similar markings, and cultivating a culture where trade secrets and proprietary information belonging to the company is viewed as one of the NUCAP's most significant assets, and the protection of the company's trade secrets and proprietary information is an organizational imperative.

40. All of the steps that NUCAP takes are more than reasonable to maintain the secrecy of its trade secret, confidential and proprietary information.

#### **Bosco's History at NUCAP**

41. Bosco began working for Nucap US in 2009, in connection with NUCAP's purchase of the business and operations of a company called Eyelet Tech LLC, an entity that was at the time wholly owned by Bosco and a business partner.

42. Bosco's official title at Nucap US was General Manager but, in actuality, he functioned in a role more similar to an executive or high level officer of the company. Bosco had access to all aspects of the business of Nucap US and was responsible for the day-to-day

supervisory management of the United States operations of Nucap US, a subsidiary of Toronto-based NUCAP.

43. Bosco had supervisory authority over all employees, projects, and products at Nucap US and NUCAP's central office in Toronto entrusted Bosco with substantial authority to run the United States operations for Nucap US.

44. Bosco was the point person for all business dealings and strategy discussions among NUCAP and Nucap US. Put differently, despite his nominal title as General Manager, Bosco had the type of access at Nucap US typically seen in high level executives.

45. Given Bosco's senior role at Nucap US, Bosco was entrusted with trade secret, confidential and proprietary information belonging to NUCAP.

46. The information included details and confidential knowledge of, among other things: (1) supplier contracts; (2) customer contracts; (3) pricing and costing; (4) tools design; (5) parts design; and (6) production rates.

47. Additionally, during Bosco's tenure at Nucap US, he worked closely with and had supervisory authority over employees in both the sales and product development departments.

48. Bosco had access to some of Plaintiffs' most valuable trade secrets and proprietary data, including detailed information regarding NUCAP's design, development, manufacturing, marketing, and sales of shims and caliper hardware.

49. All of these materials were strictly confidential to Plaintiffs and Bosco was made aware (through the various agreements that he signed, NUCAP's Code of Ethics, and otherwise) that the materials were considered trade secret, confidential and proprietary.

**Bosco's Termination and Subsequent Affiliation with Preferred**

50. Bosco was terminated for cause by Nucap US on January 23, 2012.

51. Following his termination, upon information and belief, at some point Bosco became affiliated with Preferred.

52. Until recently, Preferred was not a competitor of NUCAP.

53. Rather, Preferred was a manufacturing company in the medical and electrical fields, with some involvement in consumer goods.

54. Within the last year, Preferred has decided to expand its business model and attempt to enter the market for the manufacture and design of automotive parts, in competition with NUCAP.

55. Preferred's decision to compete with NUCAP, not so coincidentally in NUCAP's view, comes after or around the same time when Bosco first became affiliated with Preferred.

56. When Preferred first hired away two former NUCAP engineers and product development employees—Carl Dambrauskas and Tom Reynolds—NUCAP sent reminder letters to Preferred, Dambrauskas, and Reynolds in July 2012 informing them of their obligations to NUCAP, specifically with respect to the use or disclosure of NUCAP confidential, trade secret, or proprietary information.

57. While NUCAP had suspicions about Preferred's activities in the aftermath of Preferred's hiring of Dambrauskas and Reynolds, NUCAP did not rush to judgment (or to the courts, for that matter) concerning whether Preferred had actually misappropriated or was threatening to misappropriate NUCAP's trade secrets.

58. The true purpose of Preferred's actions, however, began to come to light in or around October 2013.

59. More specifically, on or about October 6-7, 2013, NUCAP learned that Bosco registered and attended the SAE Brake Colloquium – an annual industry gathering of automotive

and commercial vehicle brake application engineers, researchers and academics involved in all aspects of braking and brake systems – in Jacksonville, Florida. Bosco appeared at the Preferred booth at the convention, and, upon information and belief, was acting as a representative of Preferred.

60. As stated in greater detail below, Preferred and Bosco were displaying “new” products from Preferred that possessed striking similarities with current NUCAP products.

61. Bosco additionally attended meetings with the Preferred team at the Colloquium, during which Bosco, upon information and belief, discussed strategies for the sale, manufacture, design, and marketing of brake products and technologies on behalf of Preferred.

**Preferred Products Nearly Identical to NUCAP’s Products Appear on the Market**

62. Bosco’s activities at the SAE Brake Colloquium in October 2013 represented the first indication to NUCAP that Bosco and/or Preferred may be preparing to enter the market for designing, developing, manufacturing and/or marketing products competitive with those of NUCAP.

63. In or around Spring 2014, NUCAP learned that Preferred was targeting NUCAP customers with its brand new product line.

64. More specifically, NUCAP obtained a copy of a packet that Preferred sent to one of NUCAP’s customers pitching Preferred’s new product line. See Exhibit “B” attached (the name and identifying information of the customer is redacted because NUCAP considers its customer list and identifying information regarding the contact persons of its customers to be its trade secrets, and to protect the customer’s privacy interests).

65. The Preferred “pitch” was made by Carl Dambrauskas – the former Senior Design Engineer of Nucap US who left Nucap US on March 2, 2012, approximately one month after



Bosco left the company, and who (according to his signature block) is the "Director, Business Development" for "Preferred Automotive Components". See Exhibit "B".

66. The letter from Dambrauskas states:

You may not recognize the company name on the letterhead, but I hope it will become familiar quickly, Preferred Automotive Components, a subsidiary of Preferred Tool and Die, invites you to explore the engineering samples and brochures included in this packet.

*Id.*

67. In the letter, Dambrauskas touted his experience on behalf of Anstro Manufacturing (now Nucap US):

As you may know, I've spent nearly 12 years as a product engineer at Anstro Mfg where I was responsible for the launch of all new products, along with providing engineering support to the sales team. Today I have assumed the role of Director of Business Development for Preferred Automotive Components.

*Id.*

68. The letter from Preferred (under Dambrauskas' signature) also hinted at information relating to NUCAP that Preferred offered to "share" with the customer:

We believe that Preferred Automotive Components can offer [CUSTOMER NAME REDACTED] products, service and a **mutually beneficial exchange of information** that you may not be getting from your current suppliers.

*Id.* (emphasis added).

69. Preferred further highlighted in the letter that its "product portfolio" included shims (for now) and could be expected to include caliper hardware as well, *i.e.*, the very products for which NUCAP is known:

We look forward to discussing ways that Preferred's innovative approach to shim insulators can help [CUSTOMER NAME REDACTED]. As we progress, you can expect PAC to become a supplier of Caliper Hardware kits as well.

*Id.*

70. Attached to the letter was a product brochure, drawings, material data sheets and samples for shims being offered by Preferred.

71. An analysis of the Preferred product brochure, drawings, material data sheets and samples reveals striking similarities between the "new" Preferred products and current NUCAP products. (Because of these similarities, NUCAP is not attaching the materials attached to the letter to this Complaint so as not to waive any argument that NUCAP has unwittingly disclosed its own trade secret information encompassed within the Preferred materials.)

72. Upon information and belief, the shims that Preferred is offering for sale have been copied, derived from, and/or inspired by NUCAP's design, development and manufacturing of its own brake shims.

73. Given the difficulty that any new competitor would have in being able to quickly "go to market" with competitive products based on the amount and degree of testing, trial and error and other "normal" steps in the design/development/manufacturing process for these highly technical components, and the fact that Preferred's product offerings are strikingly similar to NUCAP's own product offerings, NUCAP believes it is certain and asserts, upon information and belief, that Preferred has benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's brake shims.

74. NUCAP further asserts, upon information and belief, that Preferred's highlighting of its apparently-soon-to-be-released caliber hardware reflects that Preferred has also benefitted (without authorization) from the trade secret, confidential and proprietary information belonging to NUCAP in the design, development, manufacturing and marketing of Preferred's caliber hardware.

**COUNT I- THREATENED AND/OR ACTUAL MISAPPROPRIATION OF TRADE  
SECRETS PURSUANT TO THE CONNECTICUT UNIFORM TRADE SECRETS ACT,  
CONN. GEN. STAT. §§ 35-50 TO 35-58**

**All Defendants**

75. Plaintiffs incorporate the allegations of all previous paragraphs by reference.

76. Bosco acquired access to and knowledge of NUCAP's trade secrets by virtue of his senior role with Nucap US.

77. NUCAP's trade secrets are not available to the general public, could not originate with another party, were compiled at substantial expense to NUCAP, and derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons (including Preferred) who can obtain economic value from its disclosure or use.

78. NUCAP takes substantial and reasonable measures to protect the secrecy of its trade secrets.

79. By virtue of his senior role at NUCAP, Bosco had intimate knowledge of NUCAP's design, development, manufacturing and marketing of NUCAP's brake shims and caliper hardware. Based on Bosco's known affiliation with Preferred; the fact that Preferred was never a competitor of NUCAP; and the fact that Preferred is now suddenly marketing competitive shims and caliper hardware, NUCAP believes and avers, upon information and belief, that Defendants are using and/or are threatening to use the trade secret information of NUCAP in the design, development, manufacturing and marketing of competitive products, without NUCAP's express or implied consent.

80. Defendants' conduct has been willful and malicious and undertaken with reckless indifference to NUCAP's rights.

81. By virtue of Defendants' actual and/or threatened misappropriation of trade secrets, NUCAP is suffering and/or is at risk of suffering immediate and irreparable harm.

82. As a result of the foregoing conduct, NUCAP has suffered damages in an amount to be proven at trial.

**COUNT II – BREACH OF CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT**

**Defendant Bosco**

83. Plaintiffs incorporate the allegations of all previous paragraphs by reference.

84. Defendant Bosco entered into a valid, binding and enforceable contract with Plaintiffs, the Confidentiality and Intellectual Property Agreement. *See* Exhibit "A".

85. The Confidentiality and Intellectual Property Agreement was supported by adequate consideration and Plaintiffs have satisfied all conditions precedent, if any.

86. Upon information and belief, Defendant Bosco breached the terms of the Confidentiality and Intellectual Property Agreement by, among other things, disclosing "Confidential Information" (as that term is defined in the Confidentiality and Intellectual Property Agreement) to Defendant Preferred without authorization.

87. By virtue of Defendant Bosco's breach, NUCAP is suffering and/or is at risk of suffering immediate and irreparable harm.

88. As a result of the foregoing conduct, NUCAP has suffered damages in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment and relief against Defendants as follows:

- a. For an injunction prohibiting Defendants from engaging in any activities that have caused, will cause and/or are threatening to cause irreparable harm to Plaintiffs;
- b. For compensatory damages in an amount to be proven at trial;
- c. For punitive damages in an amount to be proven at trial, based on Defendants' actual and/or threatened misappropriation of trade secrets;
- d. For attorneys' fees and costs incurred in connection with this action; and
- e. For such other and further relief as the Court may deem equitable and proper.

PLAINTIFFS,  
NUCAP INDUSTRIES INC.  
and NUCAP US INC.

By /s/Stephen W. Aronson  
Stephen W. Aronson  
Email: saronson@rc.com  
Nicole H. Najam  
Email: nnajam@rc.com  
Robinson & Cole LLP  
280 Trumbull Street  
Hartford, CT 06103  
Tel. No. (860) 275-8200  
Fax No. (860) 275-8299  
Juris No. 50604

Of Counsel  
**DUANE MORRIS LLP**  
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Harry M. Byrne (*Pro Hac Vice* pending)  
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Philadelphia, PA 19103  
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Fax: 215.979.1020  
LHPockers@duanemorris.com  
HMByrne@duanemorris.com

*Attorneys for Plaintiffs*

RETURN DATE: JULY 18, 2014	:	SUPERIOR COURT
NUCAP INDUSTRIES INC.;	:	
and	:	
NUCAP US INC., as successor to ANSTRO	:	
MANUFACTURING;	:	
VS.	:	J.D. NEW HAVEN
PREFERRED TOOL AND DIE, INC.;	:	AT NEW HAVEN
and	:	
PREFERRED AUTOMOTIVE	:	
COMPONENTS, a division of PREFERRED	:	
TOOL AND DIE	:	
and	:	
ROBERT A. BOSCO, JR.	:	JULY 21, 2014

**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand in the this action is greater than FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.

PLAINTIFFS,  
NUCAP INDUSTRIES INC.  
and NUCAP US INC.

By /s/Stephen W. Aronson  
 Stephen W. Aronson  
 Email: saronson@rc.com  
 Nicole H. Najam  
 Email: nnajam@rc.com  
 Robinson & Cole LLP  
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*Attorneys for Plaintiffs*

Of Counsel

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LHPockers@duanemorris.com

HMByrne@duanemorris.com

*Attorneys for Plaintiffs*

# Exhibit A



## CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT

As a condition of your employment, or continued employment, with Anstro Manufacturing, Inc., a wholly owned subsidiary of NUCAP Industries Inc. (the "Company") you agree as follows:

### CONFIDENTIAL INFORMATION

For the purposes of this Agreement, "Confidential Information" means all information owned, possessed or controlled by the Company and/or its affiliates including, without limitation, all information related to developments, inventions, product designs, drawings and specifications, business concepts, hardware, design enhancements, process know-how, strategic planning information, pricing, cost and margin information, financial records or information, marketing information, names of or lists of customers and suppliers, files and information relating to customer needs, howsoever received by you from, through or relating to the Company and/or its affiliates and in whatever form (whether oral, written, machine readable or otherwise), which pertains to the Company and/or its affiliates; provided, however, that the phrase "Confidential Information" shall not include information which:

- (a) was in the public domain prior to the date of receipt by you;
- (b) is properly within your legitimate possession prior to its disclosure hereunder, and without any obligation of confidence attaching thereto; or
- (c) becomes part of the public domain by publication or otherwise, not due to any unauthorized act or omission on your part.

You acknowledge that the Company has a legitimate and continuing proprietary interest in the protection of its Confidential Information. Consequently, you agree not to make any unauthorized use, publication, or disclosure, during or subsequent to employment by the Company, of any Confidential Information, generated or acquired by you during the course of employment with the Company, except to the extent that the disclosure of such Confidential Information is necessary to fulfill your responsibilities as an employee of the Company. Your obligations in respect of the Company's Confidential Information shall survive the termination of employment, for any reason. The use, publication or disclosure of the Confidential Information for any matter unrelated to your responsibilities as an employee may only be authorized by the global Executive Team.

Other than for internal purposes, you further covenant and agree not to copy, make notes of, draw, photocopy, take photographs, or in any other manner reproduce or cause reproductions to be made of any Confidential Information, including but not limited to plans, specifications, formula, instructions or any other documents relating to the manufacturing process, research and development or of any other aspect of the business of the Company.

You acknowledge that the Confidential Information is the sole property of the Company and you further recognize the value to the Company of the Confidential Information.

Nothing contained herein shall be construed as obliging the Company to disclose to you any Confidential Information related to the business.

## **INTELLECTUAL PROPERTY**

For the purposes of this Agreement, "Developments" means any discovery, invention, design, improvement, concept, design, specification, creation, development, treatment, computer program, method, process, apparatus, specimen, formula, formulation, product, hardware or firmware, any drawing, report, memorandum, article, letter, notebook and any other work of authorship and ideas (whether or not patentable or copyrightable) and legally recognized proprietary rights (including, but not limited to, patents, copyrights, trademarks, topographies, know-how and trade secrets), and all records and copies of records relating to the foregoing, that:

- (a) Result or derive from your employment with the Company or from your knowledge or use of Confidential Information;
- (b) Are conceived or made by you (individually or in collaboration with others) in the course of your employment;
- (c) Result from or derive from the use or application of the resources of the Company; or
- (d) Relate to the business operations of actual or demonstrably anticipated research and development by the Company.

For the purposes of this Agreement, "Intellectual Property Rights" means all worldwide intellectual and industrial property rights in connection with the Developments including, without limitation:

- (a) Patents, inventions, discoveries and improvements;
- (b) Ideas, whether patentable or not;
- (c) Copyrights;
- (d) Trademarks;
- (e) Trade secrets;
- (f) Industrial and artistic designs; and
- (g) Proprietary, possessory and ownership rights and interests of all kinds whatsoever;

including, without limitation, the right to apply for registration or protection of any of the foregoing.

All rights, titles and interests in or to the Developments shall vest and are owned exclusively by the Company immediately on its creation and regardless of the stage of its completion. You irrevocably grant, transfer and assign to the Company all of your rights, title and interest, if any, in any and all Developments, including rights to translation and

reproductions in all forms or formats and all Intellectual Property Rights thereto, if any and you agree that the Company may copyright said materials in the Company's name and secure renewal, reissues and extensions of such copyrights for such periods of time as the law may permit.

At all times hereafter, you agree to promptly disclose to the Company all Developments, to execute separate written transfers or assignments to the Company at the Company's request, and to assist the Company in obtaining any Intellectual Property Rights in Canada, the United States and in any other countries, on any Developments granted, transferred or assigned to the Company that the Company, in its sole direction, seeks to register. You also agree to sign all documents, and do all things necessary to obtain such Intellectual Property Rights, to further assign them to the Company, and to reasonably protect the Company against infringement by other parties at the Company's expense with the Company's prior written approval.

You shall keep complete, accurate and authentic information and records on all Developments in the manner and form reasonably requested. Such information and records, and all copies thereof, shall be the property of the Company as to any Developments assigned to the Company. On request, you agree to promptly surrender such information and records. All these materials will be Confidential Information upon their creation.

You hereby irrevocably waive, in favour of the Company, its successors, assigns and nominees, all moral rights arising under any applicable copyright legislation as amended (or any successor legislation of similar effect) or similar legislation in any applicable jurisdiction, or at common law, to the full extent that such rights may be waived in each respective jurisdiction, that you may have now or in the future with respect to the Developments.

#### **ADDITIONAL TERMS**

The terms, obligations, and covenants of this Agreement shall be binding on you for the duration of your employment with the Company. You acknowledge that monetary damages alone will not adequately compensate the Company for breach of any of the covenants and agreements herein and, therefore, you agree that in the event of the breach or threatened breach of any such covenant or agreement, in addition to all other remedies available to the Company, the Company shall be entitled to injunctive relief compelling specific performance of, or other compliance with, the terms hereof. Should such action become necessary to enforce the terms of this Agreement, you agree that the Company is entitled to recover from you the legal costs associated with this litigation.

If any provision of the Agreement shall be determined to be invalid or otherwise unenforceable by any court of competent jurisdiction, the validity and enforceability of the other provisions of this Agreement shall not be affected thereby.

This Agreement constitutes the entire Agreement and understanding between the Company and you concerning the subject matter hereof. No modification, amendment,

termination, or waiver of this Agreement shall be binding unless in writing and signed by a duly authorized officer of the Company. Failure of the Company to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, and conditions.

This Agreement shall be binding upon you irrespective of the duration of your retention by the Company or the amount of your compensation. Your obligations under this Agreement shall survive the termination of your employment with the Company irrespective of the reason for such termination and shall not in any way be modified, altered, or otherwise affected by such termination.

Please confirm your agreement with the foregoing by signing and returning one copy of this letter to the undersigned.

ANSTRO MANUFACTURING, INC.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and agreed as of the 2 day of Sept, 2011.

Era E. Meyer  
Witness

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
Robert R. Barco  
Print Name: Robert R. Barco

# Exhibit B

Carl Dambraskas  
30 Forest Parkway  
Shelton, CT 06484  
April 24, 2013

Dear [REDACTED]

You may not recognize the company name on the letterhead, but I hope it will become familiar quickly. Preferred Automotive Components, a subsidiary of Preferred Tool and Die, invites you to explore the engineering samples and brochures included in this packet.

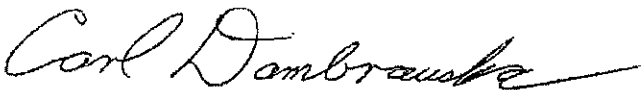
As you may know, I've spent nearly 12 years as a product engineer at Anstro Mfg where I was responsible for the launch of all new products, along with providing engineering support to the sales team. Today I have assumed the role of Director of Business Development for Preferred Automotive Components.

We believe that Preferred Automotive Components can offer [REDACTED] products, service and a mutually beneficial exchange of information that you may not be getting from your current suppliers.

We look forward to discussing ways that Preferred's innovative approach to shim insulators can help [REDACTED]. As we progress, you can expect PAC to become a supplier of Caliper Hardware kits as well.

Please feel free to review the samples and brochure included in this packet. I look forward to hearing from you in the future. I have attached my card with my contact info.

Sincerely,



Carl Dambraskas  
Director, Business Development



30 Forest Parkway  
Shelton, CT 06484  
Phone: 203.925.8525  
Fax: 203.925.8535  
[www.pacomponents.com](http://www.pacomponents.com)

# EXHIBIT C

RETURN DATE: May 13, 2014	:	SUPERIOR COURT
	:	
ROBERT BOSCO, Jr.	:	J.D. OF WATERBURY
	:	
VS.	:	AT WATERBURY
	:	
EYELET TECH NUCAP CORP. and NUCAP INDUSTRIES INC.	:	APRIL 9, 2014

### COMPLAINT

#### COUNT ONE: BREACH OF CONTRACT

1. Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.

2. Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.

3. Defendant Eyelet Tech NUCAP Corp. ("ETNC") is a corporation organized under the laws of the state of Delaware, with a principal place of business in the state of Connecticut and is registered as a foreign corporation conducting business in the state of Connecticut.

4. ETNC is a wholly owned subsidiary of NUCAP.

5. Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC ("Eyelet Tech"), a Connecticut limited liability company.

6. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.

7. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.



8. On November 19, 2009, Plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement.

9. Under the terms of the Asset Purchase Agreement ("APA"), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.

10. As part of the sale transaction, Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP, which was also executed and made effective on November 19, 2009 (the "Non-Competition Agreement"). A copy of the Confidentiality, Non-Competition and Non-Solicitation Agreement is attached as Exhibit A.

11. Under Section 3 of the Non-Competition Agreement, Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009.

12. Under the terms of the Non-Competition Agreement, Plaintiff agreed that he would not:

- a. engage in the "Business" (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);
- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;

- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and
- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

13. Under the terms of the Non-Competition Agreement, these restrictions expire on November 19, 2014 or become void in the event of a default by the Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

14. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;
- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

15. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Plaintiff.

16. Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

17. Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro").

18. On January 23, 2012, Plaintiff's employment with Anstro ceased and Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

19. On May 31, 2012, Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Plaintiff's separation from Anstro. The Separation Agreement is attached as Exhibit B.

20. Under Section 7(b) of the Separation Agreement, NUCAP and Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

21. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

22. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

23. ETNC made the Covenant Payments to the Plaintiff on the first, second and third anniversaries of the closing.

24. On or about November 11, 2013, Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be

construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009."

25. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that the Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

26. Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

27. On November 18, 2013, Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium ("your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements"); (2) spoke to NUCAP's customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

28. NUCAP admitted to the Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC's business caused by the Plaintiff's alleged actions.

29. The Defendants, in bad faith and with reckless disregard for the Plaintiff's rights under the Non-Competition Agreement, declared that the Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

30. Plaintiff performed all of his obligations under the Non-Competition Agreement.

31. The Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Plaintiff under the terms of the Non-Competition Agreement.

32. The foregoing conduct of the Defendant ETNC constitutes a breach of the Non-Competition Agreement.

33. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

34. Pursuant to Section 15 of the Separation Agreement, the Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

**COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)**

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Defendant NUCAP guaranteed the Covenant Payments of ETNC.

37. The Defendant NUCAP has failed to pay ETNC's obligations under the Non-Competition Agreement and is liable to the Plaintiff for damages caused by ETNC's failure to make the Covenant Payments when due.

38. The Plaintiff has been damaged by the actions of the Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

**COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR**

**DEALING (AGAINST NUCAP AND ETNC)**

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Plaintiff and Defendants are parties to the Non-Competition Agreement.

41. Plaintiff has not breached the Non-Competition Agreement.

42. Defendants are required to make the annual Covenant Payments to the Plaintiff.

43. Defendants unilateral termination of the Non-Competition Agreement without cause was improper and in reckless disregard of the rights of the Plaintiff.

44. In terminating Non-Competition Agreement without cause, the Defendants have acted in bad faith and/or reckless disregard for the rights of the Plaintiff under the Agreement.

45. By virtue of the foregoing, the Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Plaintiff seeks to recover from Defendants such exemplary or punitive damages as are allowed by law.

**COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER CON.**

**GEN. STAT. §42-110b, et seq. (against NUCAP AND ETNC)**

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Plaintiff, the Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Plaintiff's employment, and Plaintiff's performance of the terms of the agreements, including but not limited to the Non-Competition Agreement, without fully compensating the Plaintiff for those benefits.

50. By engaging in the acts alleged above, Defendants have engaged in conduct that:  
(a) is offensive to public policy, governing statutes for consumer protection, common law

principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Defendants have committed such acts in the conduct of trade or commerce.

52. Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, et seq.

54. The actions described above by Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Defendants alleged above, Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(c), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff Robert Bosco, Jr. demands judgment granting him:

1. actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Defendants breaches and violations of law;
2. exemplary or punitive damages;
3. damages pursuant to the CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;
4. pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
5. reasonable attorneys' fees and costs incurred in the investigation, enforcement, and litigation of this action; and
6. such other and further relief to which Plaintiff is justly entitled.

Dated: Hartford, Connecticut this 9<sup>th</sup> day of April, 2014

THE PLAINTIFF,

ROBERT BOSCO, Jr.

BY 

DAVID A. DeBASSIO  
HINCKLEY, ALLEN & SNYDER LLP  
20 Church Street  
Hartford, CT 06103  
T: (860) 725-6200  
F: (860) 278-2768  
Juris No. 428858



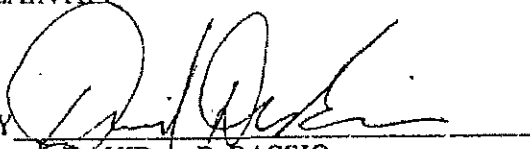
RETURN DATE: May 13, 2014	:	SUPERIOR COURT
	:	
ROBERT BOSCO, Jr.	:	J.D. OF WATERBURY
	:	
VS.	:	AT WATERBURY
	:	
EYELET TECH NUCAP CORP. and NUCAP INDUSTRIES INC.	:	APRIL 9, 2014

**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand in the above-captioned action is greater than FIFTEEN THOUSAND DOLLARS (\$15,000.00), exclusive of interest and costs.

PLAINTIFF

BY

  
\_\_\_\_\_  
DAVID A. DeBASSIO  
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Juris No. 428858

# **EXHIBIT D**

NO. UWY-CV-14-6023433-S

ROBERT BOSCO, JR.

VS.

EYELET TECH NUCAP  
CORP., ET AL.

SUPERIOR COURT

J.D. OF WATERBURY

AT WATERBURY

OCTOBER 10, 2014

**MEMORANDUM OF DECISION RE:**  
**MOTION TO DISMISS (#104)**

**FACTS**

On April 11, 2014, the plaintiff, Robert Bosco, Jr., commenced this action by service of process on the defendants, Eyelet Tech NUCAP Corporation (ETNC) and NUCAP Industries, Inc. (NUCAP). In his four count complaint, the plaintiff alleges the following facts. The plaintiff is an individual residing in Wolcott, Connecticut. NUCAP is an Ontario corporation with a principal place of business in Toronto, Ontario, Canada. ETNC, a wholly owned subsidiary of NUCAP, is a corporation organized under the laws of the state of Delaware, with a principal place of business in Connecticut and is registered as a foreign corporation conducting business in Connecticut.

The plaintiff was a co-manager and 50 percent owner of Eyelet Tech, LLC (Eyelet Tech), a Connecticut limited liability company. On November 19, 2009, the plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement, wherein ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech. As part of the sale transaction, the plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement (Non-Competition Agreement) with ETNC and NUCAP, which was also executed and

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STATE OF CONNECTICUT  
SUPERIOR COURT

made effective on November 19, 2009. The restrictions under the Non-Competition Agreement were effective for five years and would expire on November 19, 2014, or would become void in the event of a default by the defendants of their obligation under the Asset Purchase Agreement or the Non-Competition Agreement between the parties. As consideration for these restrictions in the Non-Competition Agreement, ETNC agreed that it would pay the plaintiff the gross amount of \$1,000,000 in five equal annual installments (Covenant Payments).

The plaintiff, as part of the sale transaction in November of 2009, entered into an employment agreement with Anstro Manufacturing, Inc. (Anstro), another wholly owned subsidiary of NUCAP. On January 23, 2012, the plaintiff's employment with Anstro ceased. The plaintiff entered into negotiations with NUCAP, and, on May 31, 2012, entered into a Confidential Separation Agreement and General Release (Separation Agreement), which set forth the terms of the plaintiff's separation from Anstro. Under section 7 (b) of the Separation Agreement, NUCAP and the plaintiff ratified the parties' obligations to each other under the Non-Competition Agreement. Additionally, section 15 of the Separation Agreement provided that, in the event of breach of any party's obligations under that agreement or any of the agreements referenced in the Separation Agreement, the non-breaching party had the right to recover attorney's fees and costs. Section 17 of the Separation Agreement set forth the choice of law for that agreement, which stated that Connecticut law would govern the enforcement of the Separation Agreement. Section 18 of the Separation Agreement provided that all actions or proceedings arising out of or related to the Separation Agreement would be litigated exclusively in Connecticut courts.

On November 11, 2013, the plaintiff received a letter from NUCAP, inquiring about certain actions of the plaintiff that may have been in violation of the Non-Competition Agreement. The plaintiff denied these allegations. Subsequently, on November 18, 2013, the plaintiff received notice from NUCAP that it had deemed him to be in violation of the Non-Competition Agreement. The defendants, based on these alleged violations, refused and continue to refuse to make Covenant Payments to the plaintiff. The plaintiff further alleges that he has fulfilled and continues to comply with his obligations to the defendants under the Non-Competition Agreement.

In counts one through four of the complaint, the plaintiff alleges breach of contract, breach of the guaranty against NUCAP, breach of the covenant of good faith and fair dealing against NUCAP and ETNC, and violations of General Statutes § 42-110b et seq., the Connecticut Unfair Trade Practices Act (CUTPA), against NUCAP and ETNC, respectively.

On June 16, 2014, the defendants filed a motion to dismiss the plaintiff's complaint, accompanied by a memorandum of law in support. On August 6, 2014, the plaintiff filed an objection to the motion to dismiss, accompanied by affidavits and exhibits. Thereafter, on August 7, 2014, the defendants objected to the plaintiff's untimely objection. The plaintiff responded on August 8, 2014, with a memorandum. The court heard oral argument on the matter on August 11, 2014.

#### DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *Dayner v.*

*Archdiocese of Hartford*, 301 Conn. 759, 774, 23 A.3d 1192 (2011). "The grounds which may be asserted in [a motion to dismiss] are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process." *Zizka v. Water Pollution Control Authority*, 195 Conn. 682, 687, 490 A.2d 509 (1985), citing Practice Book § 143, which is now § 10-30 (a).

The defendants argue that the court should dismiss the plaintiff's complaint for improper venue. Specifically, the defendants argue that because the allegations in the complaint relate only to alleged violations of the Non-Competition Agreement, and pursuant to the forum selection clause contained in the Non-Competition Agreement, New York, rather than Connecticut, is the proper venue. Therefore, the defendants conclude, this court does not have jurisdiction. In objection, the plaintiff argues that Connecticut is the proper venue because the Separation Agreement between the parties, which ratified and incorporated the Non-Competition Agreement, contained a forum selection clause indicating jurisdiction in Connecticut.<sup>1</sup>

"While improper venue may be raised by a motion to dismiss . . . the claim does not go to subject matter jurisdiction, but rather it is a claim that the court, which otherwise has personal jurisdiction over the defendant, should decline to exercise it under the circumstances." (Internal quotation marks omitted.) *General Electric Capital Corp. v. Metz Family Enterprises, LLC*,

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<sup>1</sup> The defendants argue that the court should not consider the plaintiff's objection to the present motion because the objection was not filed within thirty days, pursuant to Practice Book § 10-31. Section 10-31 (a) provides in relevant part: "Any adverse party shall have thirty days from the filing of the motion to dismiss to respond to the motion to dismiss . . . ." "Despite the language of Practice Book § 10-31 [a], most courts have exercised discretion to address the merits of a motion to dismiss and to waive the . . . requirement when an opposing memorandum was untimely." (Internal quotation marks omitted.) *Prenderville v. Sinclair*, Superior Court, judicial district of Middlesex, Docket No. CV-13-6010439-S (May 16, 2014, *Marcus, J.*).

In the present case, the defendants filed their motion to dismiss on June 16, 2014. The plaintiff's objection was filed on August 6, 2014, which is more than thirty days after the filing of the motion to dismiss. This court, using its discretion, will consider the untimely objection and address the merits of the motion to dismiss.

Superior Court, judicial district of Litchfield, Docket No. CV-11-6004605-S (September 8, 2011, *Pickard, J.*) (52 Conn. L. Rptr. 386, 390). "A forum selection clause is a contractual provision agreed to by private parties that constitutes the parties' agreement as to the place of the action where the parties will bring any litigation related to the contract. Restatement (Second) of Conflict of Laws § 80 (1971)." (Internal quotation marks omitted.) *Western Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 146 Conn. App. 169, 202, 78 A.3d 167, cert. granted, 310 Conn. 955, 81 A.3d 1182 (2013).

"Historically, courts viewed forum selection clauses as improper attempts by the parties to oust jurisdiction from a court that otherwise had the authority to hear an action." *Reiner, Reiner & Bendett, P.C. v. Cadle Co.*, 278 Conn. 92, 100-101, 897 A.2d 58 (2006). "In more recent years, however, courts have concluded that forum selection clauses do not oust courts of their jurisdiction, but they have been willing to enforce such contract clauses as long as they were reasonable by declining to exercise jurisdiction over an action in certain circumstances." *Id.*, 101. The Connecticut Supreme Court has recognized the enforceability of forum selection clauses and has approved of the proposition that forum selection clauses may be used as a means of arguing that a court should not exercise jurisdiction when the clause provides for jurisdiction in another forum. *Id.*, 103; see also, *United States Trust Co. v. Bohart*, 197 Conn. 34, 42, 495 A.2d 1034 (1985). "Connecticut case law is clear that the courts will uphold an agreement of the parties to submit to the jurisdiction of a particular tribunal." (Internal quotation marks omitted.) *Friedman v. Jamison Business Systems, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-01-0343518-S (February 25, 2002, *White, J.*) (31 Conn. L. Rptr. 473, 473). In Connecticut, the general rule is that "parties to a contract may agree in advance to submit to the jurisdiction of a given court. . . . Absent a showing of fraud or overreaching, such forum clauses will be enforced

by the courts." (Internal quotation marks omitted.) *Phoenix Leasing, Inc. v. Kosinski*, 47 Conn. App. 650, 654, 707 A.2d 314 (1998). Thus, "[e]ven when minimum contacts with the forum state are lacking, personal jurisdiction can be conferred on a court by consent of the parties. . . . One such manner of consent is by way of a forum selection clause." (Citation omitted; internal quotation marks omitted.) *Lincoln Imports Ltd., Inc. v. Vinny's Garden Center, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-12-6031851-S (April 24, 2013, *Mullins, J.*).

"Judges of the Superior Court have adopted a two-part analysis to determine whether a forum selection clause should be enforced. First, the court must look to contract formation itself to ascertain whether the clause was the product of fraud or deception or whether the bargaining power of the parties was so out of balance that the clause should not be enforced. . . . This step allows, inter alia, consideration [of] whether the provision is contained in an adhesion or take or leave it contract which the party was compelled to accept without argument, or discussion. . . . Second, the court considers whether, even if there existed no fraud, deception, or significantly uneven bargaining power, enforcement of the clause would cause such inconvenience to the party bringing suit that the otherwise valid contractual provision should not be enforced." (Citation omitted; internal quotation marks omitted.) *BKJRT, Inc. v. Sovereign Bank*, Superior Court, judicial district of New London, Docket No. CV-10-6005148-S (January 26, 2011, *Martin, J.*).

In the present case, applying the first part of the two-part analysis referenced above, the parties do not dispute that both the Non-Competition Agreement and the Separation Agreement were negotiated at arm's length by sophisticated parties. Additionally, the parties do not dispute the content of the particular forum selection clauses contained in each agreement. Rather, the parties disagree as to which forum selection clause controls this particular dispute.

The Non-Competition Agreement provides in section 6: "Choice of Law and Forum. This



Agreement shall be construed in accordance with and governed by Connecticut law without reference to the conflicts or choice of law principles thereof. Any litigation arising out of or relating to this Agreement shall be filed and pursued exclusively in the State or Federal courts in the County of New York, New York, and the parties hereto consent to the jurisdiction of and venue in such courts."

Section 18 of the Separation Agreement provides: "Consent to Jurisdiction. Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the United States District Court for the District of Connecticut or the Connecticut Superior Court, and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement will be litigated exclusively in such courts. Each of the parties agrees not to commence any legal proceeding related to this Agreement except in such courts. Each of the parties irrevocably waives any objection which he or it may now or hereafter have to the venue of any such proceeding in any such court and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum."

In his complaint, the plaintiff pursues various causes of action for alleged violations of the Non-Competition Agreement. There is no allegation that the defendants violated specific provisions of the Separation Agreement. In support of his position that section 18 of the Separation Agreement controls the forum selection of this lawsuit, however, the plaintiff directs the court to section 7 (b) of the Separation Agreement, which provides, in relevant part: "[The plaintiff] hereby ratifies and confirms that he is obligated to comply with certain continuing obligations contained in [the Non-Competition Agreement] by and among [the plaintiff and the defendants] dated as of November 19, 2009, which is incorporated herein by reference." This

language, the plaintiff suggests, allows the court to infer that the parties intended the Separation Agreement to supersede provisions of the Non-Competition Agreement. This court, however, will not make that inference as the plain and unambiguous language of section 7 (b) indicates only that the plaintiff is still obligated to comply with the provisions of the Non-Competition Agreement. There is no indication that the parties intended that by "incorporating by reference" the Non-Competition Agreement into the Separation Agreement, that all of the provisions contained within the Non-Competition Agreement were superseded by the Separation Agreement. The heading under which section 7 (b) is located also indicates that the inclusion of this language was merely to confirm and ratify the continued obligations found in other agreements between the parties. Under Connecticut law, incorporation by reference must be clear and unequivocal; *Halling v. Jetseal, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-01-0446481-S (June 5, 2001, *Devlin, J.*) (29 Conn. L. Rptr. 699, 700), citing *Randolph Construction Co. v. Kings East Corp.*, 165 Conn. 269, 275, 334 A.2d 464 (1973); and, here, it is not clear and unequivocal that any provision of the Non-Competition Agreement is superseded or altered by its incorporation into the Separation Agreement.

In paragraph 7 of the facts the plaintiff asserts the court must accept in his objection to the motion to dismiss, the plaintiff states that "[t]he parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements – the Non-Competition Agreement, the [Asset Purchase Agreement] and the Separation Agreement (Section 17) – and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18)." This argument is misleading. Sections 17 and 18 of the Separation Agreement do not state "all Agreements" would be governed by Connecticut law and brought in Connecticut courts. Rather, sections 17 and 18 provide that

"this Agreement" would be governed and interpreted by Connecticut law, and any actions or proceeding arising out of or relating to "this Agreement" would be litigated in Connecticut courts, referring to the Separation Agreement. "[W]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . [Connecticut courts] accord the language employed in the contract a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract. . . . Where the language is unambiguous, we must give the contract effect according to its terms." (Citations omitted; internal quotation marks omitted.) *Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC*, 125 Conn. App. 678, 690, 10 A.3d 61 (2010). Therefore, this court concludes that the use of the language "this Agreement" in sections 17 and 18 of the Separation Agreement is unambiguous and only refers to the Separation Agreement.

Applying the second part of the two-part analysis referenced above, this court concludes that enforcement of the forum selection clause in the Non-Competition Agreement would not cause such inconvenience to the party bringing suit that the otherwise valid contractual provision should not be enforced. The plaintiff lives in Connecticut. Although Connecticut courts would likely be more convenient for the plaintiff, jurisdiction in New York would not be sufficiently inconvenient to override the contractual provisions to which the parties agreed.

Because the plaintiff's cause of action is brought pursuant to alleged violations of the Non-Competition Agreement, and not for violations of the Separation Agreement, the Non-Competition Agreement controls the present litigation. Additionally, the Separation Agreement does not indicate that it supersedes all previous agreements of the parties. It only indicates that the obligations under other agreements, including the Non-Competition Agreement,

are ratified and confirmed, and therefore continue. This court concludes that the present matter was brought in an improper venue, pursuant to the forum selection clause of the Non-Competition Agreement.

CONCLUSION

For the foregoing reasons, the court grants the defendants' motion to dismiss for improper venue.

RORABACK, J.

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RORABACK, J.

# **EXHIBIT E**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
NUCAP INDUSTRIES INC. and EYELET TECH :  
NUCAP CORP., :

Plaintiffs, :

-against- :

ROBERT BOSCO, JR., :

Defendant. :

**AMENDED ANSWER**  
**WITH COUNTERCLAIMS**

Index No. 651968 / 2014

-----X  
Defendant, Robert Bosco, Jr., by and through his attorneys, Hinckley, Allen & Snyder, LLP, hereby respectfully submits his Amended Answer and Affirmative Defenses to the Complaint by the Plaintiffs, NUCAP Industries Inc. and Eyelet Tech NUCAP Corp. (collectively, "Nucap" or "Plaintiffs") and asserts the following Counterclaims.

**INTRODUCTION**

1. Denied.
2. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 2 and therefore leaves the Plaintiffs to their proof.
3. Admitted.
4. The Defendant admits that he sold his share of Eyelet LLC to NUCAP and entered into a Confidentiality, Non-Competition and Non-solicitation Agreement. Insofar as Paragraph 4 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.
5. Insofar as Paragraph 5 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

6. Bosco admits that he received certain payments from the Plaintiffs and that the Plaintiffs refused to tender the remaining payments due the Defendant pursuant to the parties Agreements. As for the remainder of the factual allegations in Paragraph 6, Defendants denies the allegations. Furthermore, to the extent Paragraph 6 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

7. Paragraph 7 contains legal conclusions for which no response is required. To the extent any response is required the allegations of Paragraph 7 are denied.

#### **THE PARTIES**

8. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8.

9. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 9.

10. Admitted.

#### **JURISDICTION AND VENUE**

11. Denied.

12. Denied.

#### **FACTUAL BACKGROUND** **(Plaintiff's Business)**

13. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 13.

14. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 14.

15. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 15.

16. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 16.

17. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 17 and therefore leaves the Plaintiffs to their proof.

18. Admitted.

19. Admitted.

20. Defendant admits that Eyelet LLC had clients located in the United States, Canada and Mexico; as for the remainder of the allegations the Defendant lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations and therefore leaves the Plaintiffs to their proof.

21. Denied. Insofar as Paragraph 21 implicates a written agreement, the terms of the Agreements speak for themselves.

22. Denied. Insofar as Paragraph 22 implicates a written agreement, the terms of the Agreements speak for themselves.

23. Denied. Insofar as Paragraph 23 references a written agreement, the terms of the Agreements speak for themselves.

24. Denied. Insofar as Paragraph 24 references a written agreement, the terms of the Agreements speak for themselves.

25. Denied. Insofar as Paragraph 25 references a written agreement, the terms of the Agreements speak for themselves.



26. Denied. Insofar as Paragraph 26 implicates a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 26 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

27. Denied. Insofar as Paragraph 27 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 27 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

28. Denied. Insofar as Paragraph 28 references a written agreement, the terms of the Agreements speak for themselves.

29. Denied. Insofar as Paragraph 29 references a written agreement, the terms of the Agreements speak for themselves.

30. Denied. Insofar as Paragraph 30 references a written agreement, the terms of the Agreements speak for themselves.

31. Denied. Insofar as Paragraph 31 references a written agreement, the terms of the Agreements speak for themselves.

32. Denied. Furthermore, to the extent Paragraph 6 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

33. Denied. Insofar as Paragraph 33 references a written agreement, the terms of the Agreements speak for themselves.

34. Denied. Insofar as Paragraph 34 references a written agreement, the terms of the Agreements speak for themselves.

35. Denied. Insofar as Paragraph 35 references a written agreement, the terms of the Agreements speak for themselves.

36. Denied. Additionally, to the extent Paragraph 36 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 36 references a written agreement, the terms of the Agreements speak for themselves.

37. Denied. Insofar as Paragraph 37 references a written agreement, the terms of the Agreements speak for themselves.

38. Admitted.

39. Insofar as Paragraph 39 references a written agreement, the terms of the Agreements speak for themselves.

40. Denied. Additionally, to the extent Paragraph 40 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 40 references a written agreement, the terms of the Agreements speak for themselves.

41. Denied.

42. Denied. Insofar as Paragraph 42 references a written agreement, the terms of the Agreements speak for themselves. Furthermore, to the extent Paragraph 42 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

43. To the extent Paragraph 43 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 43 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

44. Insofar as Paragraph 44 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

45. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 45.

46. Insofar as Paragraph 46 references a written agreement, the terms of the Agreements speak for themselves. Defendant admits he received certain payments from the Plaintiffs.

47. Defendant admits he received certain payments from the Defendants. Insofar as Paragraph 47 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

48. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 48.

49. Denied.

50. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 50.

51. Denied.

52. Denied.

53. Denied. Furthermore, to the extent Paragraph 53 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 53 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

54. Denied.

55. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 55. Defendant denies that he engaged in any illicit activities.

56. Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 56. Furthermore, to the extent Paragraph 56 contains

legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

57. Defendant admits that the Plaintiffs contacted him..

58. Denied.

59. Defendant admit the Plaintiffs refused to make any further Covenant Payments that were due Defendant. Defendant denied that he breached the Non-Competition Agreement and further asserts that NUCAP remains obligated to make the remaining Covenant Payments that are due. As for the remainder of the allegations, Defendant lacks knowledge and information sufficient to form a belief as to the truth of the matters asserted in Paragraph 59.

60. Denied. Furthermore, to the extent Paragraph 60 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

61. Denied. Furthermore, to the extent Paragraph 61 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

62. Denied. Furthermore, to the extent Paragraph 62 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof.

63. Denied. Furthermore, to the extent Paragraph 63 contains legal conclusions for which no response is required, Defendant leaves the Plaintiffs to their proof. Insofar as Paragraph 63 references a written agreement, the terms of the Agreements speak for themselves, and no further response is required.

**COUNT I**  
**(Breach of Contract)**

64. Paragraph 64 is a paragraph of incorporation to which no response is required. To the extent a response is required, Defendant incorporates by reference herein his responses to Paragraphs 1 – 63.

65. The Defendant admits that the Plaintiff and Defendant are parties to the referenced Agreement. The remainder of Paragraph 65 contains legal conclusion to which no response is required.

66. Denied. Moreover, Paragraph 66 contains legal conclusion to which no response is required. Insofar as Paragraph 66 references a written agreement, the terms of the Agreements speak for themselves.

67. Denied. Moreover, Paragraph 67 contains legal conclusion to which no response is required.

68. Denied. Moreover, Paragraph 68 contains legal conclusion to which no response is required.

69. Denied. Moreover, Paragraph 69 contains legal conclusion to which no response is required.

70. Denied. Moreover, Paragraph 70 contains legal conclusion to which no response is required.

**COUNT II**  
**(Breach of Fiduciary Duty)**

71. Paragraph 71 is a paragraph of incorporation to which no response is required. To the extent a response is required Defendant incorporates by reference herein his responses to Paragraphs 1- 70.

72. Denied. Moreover, Paragraph 72 contains legal conclusion to which no response is required.

73. Denied. Moreover, Paragraph 73 contains legal conclusion to which no response is required.

74. Denied. Moreover, Paragraph 74 contains legal conclusion to which no response is required.

75. Denied. Moreover, Paragraph 75 contains legal conclusion to which no response is required.

76. Denied. Moreover, Paragraph 76 contains legal conclusion to which no response is required.

**AS AND FOR HIS FIRST AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

**AS AND FOR HIS SECOND AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' damages, if any, were caused in whole or in part by other parties for which Defendant bears no responsibility.

**AS AND FOR HIS THIRD AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' claims are barred by the doctrine of waiver.

**AS AND FOR HIS FOURTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' claims are barred by the non-occurrence of conditions precedent and/or subsequent.

**AS AND FOR HIS FIFTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

The alleged damages, if any, of the Plaintiff were proximately caused by actions unrelated and remote to any action or inaction of Defendant.

**AS AND FOR HIS SIXTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' damages, if any, were caused in whole or in part by its own actions and the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to Plaintiffs bears to the culpable conduct of Defendant.

**AS AND FOR HIS SEVENTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' claims are barred by the doctrine of unclean hands.

**AS AND FOR HIS EIGHTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' claims are barred by their own material breach of contract.

**AS AND FOR HIS NINTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES**

Plaintiffs' claims are barred insofar as Defendant is not a person subject to the personal or subject matter jurisdiction of the Court.

**AS AND FOR HIS TENTH AFFIRMATIVE DEFENSE**  
**DEFENDANT ALLEGES:**

Plaintiffs' claims are barred insofar as there is another action pending between the same parties for the same cause of action in another court.

WHEREFORE, Defendant, Robert Bosco, Jr., respectfully demands judgment in this action as follows:

1. Dismissing Plaintiffs' Complaint in its entirety; and,
2. For the costs and disbursements of this action and such other, further or different relief as the Court may deem just and proper.

**COUNTERCLAIMS**

**COUNT ONE: BREACH OF CONTRACT**

1. Counterclaim-Plaintiff Robert Bosco, Jr. is an individual residing in Wolcott, Connecticut and is a citizen of the State of Connecticut.
2. Counterclaim-Defendant NUCAP Industries Inc. ("NUCAP") is an Ontario corporation with a principal place of business located in Toronto, Ontario, Canada.
3. Counterclaim-Defendant Eyelet Tech NUCAP Corp. ("ETNC") is a corporation organized under the laws of the state of Delaware, with a principal place of business in the state of Connecticut and is registered as a foreign corporation conducting business in the state of Connecticut.
4. ETNC is a wholly owned subsidiary of NUCAP.



5. Counterclaim-Plaintiff was the Co-Manager and 50% owner of Eyelet Tech, LLC ("Eyelet Tech"), a Connecticut limited liability company.

6. Eyelet Tech was in the business of manufacturing eyelet and spring brake pad components used in trains, airplanes, automobiles, trucks and other vehicles, as well as providing stamping and machining services for the component parts.

7. Eyelet Tech had customers located in Connecticut, certain other states located within the United States, as well as certain parts of Canada and Mexico.

8. On November 19, 2009, Counterclaim-Plaintiff and his co-owner sold Eyelet Tech to NUCAP and ETNC, pursuant to an Asset Purchase Agreement.

9. Under the terms of the Asset Purchase Agreement ("APA"), ETNC purchased certain assets and assumed certain liabilities of Eyelet Tech.

10. As part of the sale transaction, Counterclaim-Plaintiff entered into a Confidentiality, Non-Competition and Non-Solicitation Agreement with ETNC and NUCAP, which was also executed and made effective on November 19, 2009 (the "Non-Competition Agreement"). A copy of the Confidentiality, Non-Competition and Non-Solicitation Agreement is attached as Exhibit A.

11. Under Section 3 of the Non-Competition Agreement, Counterclaim-Plaintiff agreed to certain restrictive covenants for a period of five years after the closing of the sales transaction, which occurred on November 19, 2009.

12. Under the terms of the Non-Competition Agreement, Counterclaim-Plaintiff agreed that he would not:

- a. engage in the "Business" (defined as making components of brake systems for trains, airplanes, automobiles, trucks and other vehicles and providing stamping and machining services for such components);

- b. provide services to assist any competitor to ETNC in competing in the Territory (defined as including: the State of Connecticut; all other states in the US in which Eyelet Tech customers are located as of the closing date; all other states in the US; Canada; and Mexico) against ETNC with respect to the Business;
- c. provide services relating to, or in competition against ETNC with respect to the Business on behalf of Capital Tool Ltd, Util Industries SpA, Util China, Util Mexico, Yamamoto; Wolverine Division of Eagle-Pitcher, Material Sciences Corp., Trelleborg Rubore, and Precision Resources, Inc.;
- d. solicit or take away from ETNC the business of any ETNC customers or suppliers who have sold goods or services to Eyelet Tech seller for the purpose of selling or providing to any customer, or purchasing from any such supplier, any product, program, or service which is within the scope of the Business;
- e. cause customers or suppliers to terminate or reduce their existing relationship with ETNC or its affiliates;
- f. provide any competitive products or services within the scope of the Business to any customers in competition against ETNC or its affiliates; and
- g. persuade any Eyelet Tech who becomes an employee of ETNC to leave the employ of or cease providing services to ETNC or to work for a competitor of ETNC.

13. Under the terms of the Non-Competition Agreement, these restrictions expire on November 19, 2014 or become void in the event of a default by the Defendants of their obligations under the APA or the Non-Competition Agreement between the parties.

14. As consideration for these restrictions set forth in the Non-Competition Agreement, ETNC agreed that it would pay Counterclaim-Plaintiff the gross amount of \$1,000,000 ("Covenant Payments") in five equal annual installments, payable as follows:

- \$200,000 payable within five business days of the first anniversary of the closing;

- \$200,000 payable within five business days of the second anniversary of the closing;
- \$200,000 payable within five business days of the third anniversary of the closing;
- \$200,000 payable within five business days of the fourth anniversary of the closing; and
- \$200,000 payable within five business days of the fifth anniversary of the closing.

15. Pursuant to Section 8 of the Non-Competition Agreement, NUCAP guaranteed that ETNC would duly and punctually make the Covenant Payments to the Counterclaim-Plaintiff.

16. Counterclaim-Plaintiff has fulfilled, and continues to comply with his obligations to the Defendants under Non-Competition Agreement.

17. Counterclaim-Plaintiff, as part of the sale transaction in November 2009, entered into an employment agreement with another wholly owned subsidiary of NUCAP called Anstro Manufacturing, Inc. ("Anstro").

18. On January 23, 2012, Counterclaim-Plaintiff's employment with Anstro ceased and Counterclaim-Plaintiff entered into negotiations with NUCAP to set the terms of his separation from Anstro.

19. On May 31, 2012, Counterclaim-Plaintiff and NUCAP entered into a Confidential Separation Agreement and General Release (the "Separation Agreement"), which set the terms of Counterclaim-Plaintiff's separation from Anstro. The Separation Agreement is attached as Exhibit B.

20. Under Section 7(b) of the Separation Agreement, NUCAP and Counterclaim-Plaintiff expressly ratified the parties' obligations to each other under the Non-Competition Agreement.

21. Section 15 of the Separation Agreement provides that, in the event of breach of any party's obligations under the Non-Competition Agreement, the non-breaching party has the right to recover its attorney's fees and costs incurred in the investigation, enforcement, and litigation on account of such breach.

22. The parties agreed in the Separation Agreement that Connecticut law would govern the enforcement of all the Agreements -- the Non-Competition Agreement, the APA and the Separation Agreement (Section 17) -- and that all actions thereunder would be brought in either the U.S. District Court for the District of Connecticut or the Connecticut Superior Court (Section 18).

23. ETNC made the Covenant Payments to the Counterclaim-Plaintiff on the first, second and third anniversaries of the closing.

24. On or about November 11, 2013, Counterclaim-Plaintiff received a letter from NUCAP, the purported purpose of which was "to inquire about [Mr. Bosco's] actions that reasonably may be construed as violating the terms of the Confidentiality, Non-Competition, and Non-Solicitation Agreement, dated as of November 2009."

25. NUCAP alleged that it understood "from its monitoring of [Mr. Bosco's] behavior" that the Counterclaim-Plaintiff had met with people to explore business opportunities and attended the 2013 SAE Brake Colloquium.

26. Counterclaim-Plaintiff denied these allegations and explained to NUCAP that he had not violated the Non-Competition Agreement.

27. On November 18, 2013, Counterclaim-Plaintiff received notice from NUCAP that it deemed him to be in violation of the Non-Competition Agreement on the basis that he: (1) attended the SAE Brake Colloquium ("your mere attendance and registration at the SAE Brake Colloquium is a violation of your agreements"); (2) spoke to NUCAP's customers and suppliers; and (3) and socialized with high school friends that had a booth at the conference in Florida (suggesting that socializing with these same individuals in Connecticut where they all lived would not have been a violation).

28. NUCAP admitted to the Counterclaim-Plaintiff that its position was based on mere suspicions and not any actual impact on NUCAP or ETNC's business caused by the Counterclaim-Plaintiff's alleged actions.

29. The Counterclaim-Defendants, in bad faith and with reckless disregard for the Counterclaim-Plaintiff's rights under the Non-Competition Agreement, declared that the Counterclaim-Plaintiff was in violation of the covenants and refused to tender the 2013 Covenant Payment of \$200,000 when due.

30. Counterclaim-Plaintiff performed all of his obligations under the Non-Competition Agreement.

31. The Counterclaim-Defendants deliberately refused and have continued to refuse to make the Covenant Payments due to the Counterclaim-Plaintiff under the terms of the Non-Competition Agreement.

32. The foregoing conduct of the Counterclaim-Defendant ETNC constitutes a breach of the Non-Competition Agreement.

33. As a result of the foregoing conduct, Mr. Bosco has suffered damages in an amount to be proved at trial.

34. Pursuant to Section 15 of the Separation Agreement, the Counterclaim-Plaintiff is also entitled to recover his attorney's fees and costs incurred in the investigation, enforcement, and litigation of his rights under the Non-Competition Agreement.

**COUNT TWO: BREACH OF THE GUARANTY (against NUCAP)**

35. Paragraphs 1 through 34 of Count One are hereby incorporated by reference and made paragraphs 1 through 34 of Count Two as if fully set forth herein.

36. The Counterclaim-Defendant NUCAP guaranteed the Covenant Payments of ETNC.

37. The Counterclaim-Defendant NUCAP has failed to pay ETNC's obligations under the Non-Competition Agreement and is liable to the Counterclaim-Plaintiff for damages caused by ETNC's failure to make the Covenant Payments when due.

38. The Counterclaim-Plaintiff has been damaged by the actions of the Counterclaim-Defendant NUCAP in failing to fulfill its obligations to pay the Covenant Payments when due.

**COUNT THREE: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING (against NUCAP and ETNC)**

39. Paragraphs 1 through 38 of Count Two are hereby incorporated by reference and made paragraphs 1 through 38 of Count Three as if fully set forth herein.

40. Counterclaim-Plaintiff and Counterclaim-Defendants are parties to the Non-Competition Agreement.

41. Counterclaim-Plaintiff has not breached the Non-Competition Agreement.

42. Counterclaim-Defendants are required to make the annual Covenant Payments to the Counterclaim-Plaintiff.

43. Counterclaim-Defendants unilateral termination of the Non-Competition Agreement without cause was improper and in reckless disregard of the rights of the Counterclaim-Plaintiff.

44. In terminating Non-Competition Agreement without cause, the Counterclaim-Defendants have acted in bad faith and/or reckless disregard for the rights of the Counterclaim-Plaintiff under the Agreement.

45. By virtue of the foregoing, the Counterclaim-Plaintiff has suffered injury and damage in an amount to be proven at trial.

46. Counterclaim-Defendants' conduct, as alleged herein, is aggravated by that certain willfulness, wantonness and/or malice for which the law allows the impositions of, among other things, exemplary or punitive damages.

47. In addition to actual damages, Counterclaim-Plaintiff seeks to recover from Counterclaim-Defendants such exemplary or punitive damages as are allowed by law.

**COUNT FOUR: UNFAIR COMPETITION AND TRADE PRACTICES UNDER**  
**CON. GEN. STAT. §42-110b, *et seq.* (against NUCAP and ETNC)**

48. Paragraphs 1 through 47 of Count Three are hereby incorporated by reference and made paragraphs 1 through 47 of Count Four as if fully set forth herein.

49. By engaging in the acts alleged above and with reckless disregard for the rights of the Counterclaim-Plaintiff, the Counterclaim-Defendants retained the major benefit of all the agreements relating to the sale of Eyelet Tech to ETNC and NUCAP, namely the assets of Eyelet Tech, Counterclaim-Plaintiff's employment, and Counterclaim-Plaintiff's performance of the

terms of the agreements, including but not limited to the Non-Competition Agreement, without fully compensating the Counterclaim-Plaintiff for those benefits.

50. By engaging in the acts alleged above, Counterclaim-Defendants have engaged in conduct that: (a) is offensive to public policy, governing statutes for consumer protection, common law principles and/or established concepts of fairness, and/or (b) has caused substantial injury to consumers.

51. Counterclaim-Defendants have committed such acts in the conduct of trade or commerce.

52. Counterclaim-Plaintiff has suffered an ascertainable loss of money.

53. By virtue of the above conduct, Counterclaim-Defendants have engaged in unfair competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of CUTPA, Conn. Gen. Stat. § 42-110b, et seq.

54. The actions described above by Counterclaim-Defendants were willful, wanton and/or malicious.

55. As a direct and proximate result of the actions of Counterclaim-Defendants alleged above, Counterclaim-Plaintiff has been damaged, and seeks the recovery of compensatory and exemplary or punitive damages, and attorneys' fees and costs.

56. In accordance with Conn. Gen. Stat. §§ 42-110g(c), a copy of this Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection.



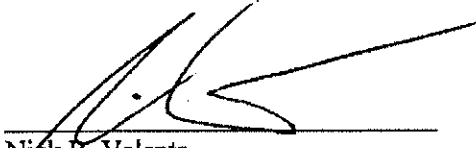
**PRAYER FOR RELIEF**

**WHEREFORE**, the Counterclaim-Plaintiff Robert Bosco, Jr. demands judgment granting him:

1. Actual and compensatory damages in an amount to be proven at trial including loss profits and other damages related to Counterclaim Defendants breaches and violations of law;
2. Exemplary or punitive damages;
3. Damages pursuant to the CUTPA, Conn. Gen. Stat. § 42-110g, including but not limited to, compensatory and punitive damages and attorneys' fees and costs;
4. Pre-judgment and post-judgment interest on all sums deemed due and owing at the highest rate provided by law;
5. Reasonable attorneys' fees and costs incurred in the investigation, enforcement, and litigation of this action; and
6. Such other and further relief to which Counterclaim-Plaintiff is justly entitled.

Dated: December 11, 2014  
Hartford, Connecticut

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